



Lex Info

An E - Magazine
(from Law Branch, South Central Railway)

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Vol -IV

Issue - 02

February 2021

Page No.	Article
2	The Power of Attorney Act, 1882
3	Right To Information Series..... Contd.
4	There would be no bar in ordering recovery, if the employee concerned had executed an undertaking agreeing to refund any excess payment
5	Difference Between: Vakalatnama & Power of Attorney FAQ: What is Res Sub-Judice?
6	Moral Policing' is not the job of Internal Complaints Committee – ICC is not empowered to recommend disciplinary action when Complaint is rejected.
7	Yours Legally— Erroneous decision by a proper forum attains finality inter parties unless assailed:
8	Treatise on Arbitration & Conciliation Act, 1996

Legal Maxim

Non Sequitur – A statement (such as a response) that does not follow logically from or is not clearly related to anything previously said.

ABC OF ACTS

The Power of Attorney Act, 1882 Act No.7 of 1882 (24th Feb.1882)

The Power of Attorney Act applies to the whole of India. It came into force on the first day of May, 1882. Section 1A of The Powers-Of-attorney Act, 1882 Power of Attorney includes any instrument empowering a specified person to act for and in the name of the person executing it. As per Section 2(21) Indian Stamp Act 1899, Power-of-attorney includes any instrument (not chargeable with a fee under the law relating to court-fees for the time being in force) empowering a specified person to act for and in the name of the person executing it. A power of Attorney holder is nothing but an agent as to S. 182 of the Indian Contract Act, 1872.

S. 2 of the Powers-Of-Attorney Act, 1882 says that everything done by the donee shall be as effectual in law as if it has been done by the donee of the power in the name and with signature of the donor. It empowers the donee to execute or to do anything, in and with his own name and signature by the authority of the donor of the power.

There are two types of Power-of-Attorney viz.

General Power of Attorney: It is a broad authorization of power to the agent. The agent entitled to make medical decisions, legal acts, financial or contractual dealings or property dealings on behalf of his principal.

Special Power of Attorney: In this type of authorization, the agent is restricted to act only specific/particular matters or transaction for the principal. The power of the agent expires on the completion of the transaction.

The instrument of POA is to be considered as an evidence only if it has been authenticated or attested by any Notary Public since under Sec. 8(1)(a)10 of the Notaries Act, 1952, a notary may do all or any acts by virtue of his office viz. verify, authenticate, certify or attest the execution of any instrument. Registration of deed is optional since the document of POA deed does not fall within the ambit of S.17 of Indian Registration Act 1908.

Competency to execute POA: S.183 & 184 of the Indian Contract Act 1872 provides that the agency must be created between those persons who are major and sound mind at the time of formation of an agency. However, the married women can execute power of attorney even if they are minors.

Attorney Holder can file and appear in civil proceeding as under order 3 rule 2 of C.P.C. A party to the Court Proceedings may be represented by a Power-of -Attorney holder which duly authorized by the Party/Principal i.e Plaintiff or defendant. Order 3 Rule 2 of CPC specifies the POA- holder as recognized agent for the Party. In a sense a Vakalatnama is a POA and Vakalatnama is the only valid authority for pleading the case by decree-holder to the advocate, whereas Power of attorney is the grant given to a registered advocate allowed to take decisions with respect to business affairs of the client.

Revocation/cancellation of Power of Attorney: There are a no.of situations where the relationship of principal & agent and between the attorney holder & the donor/principal has come to an end and there is no explicit law governing the same. Moreover, Section 3 of The Power-of Attorney Act 1882 also does not provide for revocation/cancellation. However, there are many provisions which have been drawn from the Indian Contract Act, 1872 and applied to the situation of POA. POA can be revoked besides the conditions stipulated for termination of agency u/s. 201 of the Indian Contract Act, 1872, w i.e.when the holder/agent of the POA renounces the agency, when the purpose or business for the execution of such POA is completed, on the death of either Principal/Donor or Agent/Donee. There can also be Situations where there is an 'Implied Revocation' mentioned in the terms of such POA executed between the parties. S.202 of the Indian Contract Act states that if the agent in a principal-agent relationship has an interest in the agency then, the power of attorney cannot be revoked without the consent of the agent. This also implies if the appointed attorney (or agent) has somehow broken the terms of the contract between the principal and agent then, the principal can revoke the POA. S.206 of Indian Contract Act provides that reasonable notice of such revocation or renunciation must be given to the principal or agent otherwise the damages thereby resulting must be made good to the one by the other. If the Power-Of-Attorney is Registered and Drafted the deed of revocation/cancellation of actual power-of-attorney, then the said fresh deed shall be submitted for its registration before the same Sub-Registrar where the actual POA was registered. After such registration, a notice of the same shall be sent to all the relevant authorities/parties/people etc., annexing such registered revoked/cancelled deed. Thereafter, the person who is executing such (Revocation Deed of POA) should publish the same in the two local and regional newspapers for such information to be known to the General Public. In case the POA is not regd., the procedure is same as above except the registration of revocation/cancellation deed is not required i.e the duly stamped and notarized revocation deed of POA is sufficient.

Transaction of immovable property by POA: Any transactions by way of GPA/SPA do not convey any title nor create any interest in an immovable property. The immovable property can only be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Generally, sub-delegation of legislative power is impermissible, yet it can be permitted either when such power is expressly conferred under the statute or can be inferred by necessary implication. As per the Legal Maxim '**Delegatus Non-Potest Delegare**' means "no delegated powers can be further delegated." This is so because there is a well-established principle that a sub-delegate cannot act beyond the scope of power delegated to him. "One to whom a power is delegated, cannot himself further delegate that power. An attorney given legal authority in a power of attorney cannot, of their own volition, delegate the exercise of that authority without the consent of the person who granted the power of attorney.

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

RTI Series

.....Contd.. from last issue

Let us have a look at some more orders on Section 10, to get a better picture:

The CIC held that disclosure of complete investigation report to the Appellant may endanger the life of the persons who contributed to investigation process, namely witnesses and the Investigation officer. The PIO was, therefore, directed to furnish the copy of the said investigation report only after severing from it under section 10(1) of the RTI Act the names of the investigation officer and the names of witness which attract the exemption under section 8(1)(g) of the RTI Act. [J.P. Singh Vs. Ministry of Railway, Railway Board, New Delhi. CIC/AD/A/2012/000187. DOO – 20.03.2012].

In Shri A.L. Motwani Vs. ITI Limited, Bengaluru [CIC/MA/A/2008/01233/AD. DOO – 03.08.2009] the CPIO, CBI, Bangalore was directed to comply with the Order of the CIC and to provide all the information available with them while relying on clause 10(1) of the RTI Act for severing information which is exempt from disclosure.

In another case before the CIC, the appellant applied for empanelment/appointment to the post of Member, CBDT twice on 10.5.2006 and 21.11.2006 but was not selected. Aggrieved by the said non-selection, the appellant by her two RTI Applications, submitted on 10.8.2007 and 17.8.2007, sought for certain information which could throw light on the reason for her non-selection. The Public Authority was directed to make available information in terms of request of the appellant but there shall be no obligation to disclose details concerning 3rd parties. The respondent Public Authority was authorised to suitably use the severability clause in Section 10(1) of the RTI Act. [Ms. J.D. Sahay Vs. Ministry of Finance. CIC/AT/A/2008/00027 & 33. DOO – 06.02.2009]

In another case of significant importance, the appellant, Saurabh Sarvottam Dhanorkar, submitted RTI application dated 24.08.2011 before the CPIO, RBI, Mumbai seeking copies of show cause notices issued by RBI to 19 banks as mentioned in the press release 2010-2011/1555; copies of written response/replies submitted by all banks; all correspondence exchanged between RBI with the banks in respect of the show cause notices; pleadings, submissions, notes, documents, if any, filed by all the banks; file noting and entire record maintained by the RBI in respect of show cause notices; records held by RBI or under its control or used by its employees for discharging its functions while issuing show cause notice; the orders passed in the show cause notices etc. through seven points.

The Supreme Court of India after clubbing all related matters pending before various High Courts, vide its judgment dated 16.12.2015, allowed disclosure of inspection reports conducted by the RBI on banks to the general public. In view of above judgement of the Supreme Court of India, the matter was heard by the Commission on 07.04.2016.

The appellant's representatives stated that the CIC in the matter of Subhash Chandra Agrawal Vs. RBI

[CIC/SG/A/2011/002254 dated 17.11.2011], Dr. Mohan K. Patil vs. RBI [CIC/SG/A/2011/002069 dated 29.11.2011] and Shri K.P. Muralidharan Nair vs. RBI [No. CIC/SG/A/2011/002841 dated 09.11.2.12] directed the respondents to provide complete information to the appellants. The Hon'ble Supreme Court of India had upheld the decision of the CIC in these cases. They further stated that now the Supreme Court of India vide its judgment dated 16.12.2015 para 10 allowed disclosure of documents/correspondence/ file notings etc. of RBI on imposing fines on some banks for violating rules along with list of banks which were ultimately found guilty, complete list of banks which were issued show cause notices before fine was imposed, list of those banks where fine was not imposed etc had allowed disclosure of information. However, the appellant confined his demand to the information pertaining to Deutsche Bank AG. After considering the submissions of both the parties, the CIC directed the CPIO to provide copy of show cause notice issued to the Deutsche Bank AG, their reply/ written submissions, if any and penalty order issued by RBI, by invoking Section 10 of the RTI Act, 2005 after severing the third party information, to the appellant within 21 days of the receipt of the order of the CIC. [Saurabh Sarvottam Dhanorkar v. RBI, Mumbai. CIC/SG/A/2012/721/MP. DOO – 29.04.2016].

In another case, the supply of evaluated answer sheets under RTI Act came to be adjudicated. Examining body expects the examiner not to disclose the information regarding evaluation to anyone other than the examining body. Similarly, the examiner also expects that his name and particulars would not be disclosed to the candidates whose answer books are evaluated by him, lest the examinee may attempt to endanger his physical safety. The above applies not only to the examiner, but also to the scrutiniser, co-ordinator and head examiner who deal with the answer book.

The answer book usually contains not only the signature and code number of the examiner, but also the signatures and code number of the scrutiniser/ coordinator/head examiner. The information as to the names or particulars of the examiners/co-ordinators/scrutinisers/head examiners are therefore exempted from disclosure under Section 8(1)(g) of the RTI Act, on the ground that if such information is disclosed, it may endanger their physical safety. Therefore, if the examinees are to be given access to evaluated answer books either by permitting inspection or by granting certified copies, such access will have to be given only to that part of the answer book which does not contain any information or signature of the examiners/co-ordinators/scrutinisers/head examiners, exempted from disclosure Under Section 8(1)(g) of the RTI Act. Those portions of the answer books which contain information regarding the examiners/coordinators/scrutinisers/head examiners or which may disclose their identity with reference to signature or initials, shall have to be removed, covered, or otherwise severed from the non-exempted part of the answer books, Under Section 10 of the RTI Act. (Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi and Anr. Civil Appeal No. 9052 of 2012 [Arising out of SLP (C) No. 20217/2011].

M.K. Shaji, CLA/RWF

There would be no bar in ordering recovery, if the employee concerned had executed an undertaking agreeing to refund any excess payment:

State Of Kerala vs VINOD KUMAR decided on 1 July, 2020

1. The question before the court is whether recovery could have been ordered or proceeded with against the 1st respondent before the Tribunal. The Tribunal has answered that question against the State and its officers. We are now called upon to pronounce upon the validity of the decision taken by the Tribunal.

2. The learned Government Pleader submits that the judgment of the Supreme Court in Rafiq Masih (2015) 4 SCC 334 is no longer good law, in the light of the later judgment of the Supreme Court in High Court of Punjab and Haryana and others v. Jagdev Singh; (2016) 14 SCC 267.

3. He would state that the principle in Rafiq Masih cannot be applied in situations where undertakings had been given by the employee concerned, undertaking, to refund any excess payment received. He would, therefore, state that the present case is one that is squarely covered in his favour in terms of the ratio of the judgment of the Supreme Court in Jagdev Singh, and draws our attention, in particular, to paragraphs 10 and 11 of that judgment.

4. It was vehemently contend that the judgment of the Supreme Court in Jagdev Singh should not be treated as laying down an absolute principle which states that wherever the employee concerned had undertaken to refund excess pay, recovery could be effected at any point of time. He would state that the law laid down in Jagdev Singh should be confined to its own facts and should not be treated as applying to a case of this nature. He would urge that we should follow the judgment in Rafiq Masih.

5. In the light of the contentions raised, it was found necessary to consider the law laid down in Jagdev Singh and to see whether this later judgment of the Supreme Court makes a complete departure from the law laid down in Rafiq Masih. In Jagdev Singh case on his writ petition, the High Court came to the conclusion that any excess payment made to him prior to his retirement could not be recovered, there being no fraud or misrepresentation on his part. The judgment of the High Court was reversed by the Supreme Court, on a short ground which we will notice after setting out the law laid down in Rafiq Masih. After noticing the categories of situations set out as (i) to (v) in paragraph 18 of Rafiq Masih, the Supreme Court in Jagdev Singh held in paragraph 11 as follows:-

"11. The principle enunciated in Proposition (ii) above cannot apply to a situation such as in the pre-

sent case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking."

From a reading of paragraphs 10 and 11 of Jagdev Singh, it appears to Kerala High Court that the Supreme Court had only clarified that in the case of recovery from retired employees or employees who are due to retire within one year of the order of recovery, there would be no bar in ordering recovery, if the employee concerned had executed an undertaking agreeing to refund any excess payment.

In the case Syed Abdul Qadir & ors. v. State of Bihar & ors. which was delivered by a Bench of three Hon'ble Judges and it was held:-

"58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess.

I.V.V.R.P. Prasad, Sr.LO, PCPO/O/SCR

KNOW OUR CONSTITUTION

Article-39A. Equal justice and free legal aid The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

Article-40. Organisation of village panchayats The State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

Article-41. Right to work, to education and to public assistance in certain cases The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

Difference between**Vakalatnama & Power of Attorney****FAQ****What is Res Sub-Judice?****Vakalatnama**

As per Section 2(u) of Advocates' Welfare Funds Act, 2001, "Vakalatnama" includes memorandum of appearance or any other document by which an advocate is empowered to appear or plead before any court, tribunal or other authority.

Vakalatnama is a document which allows the advocate to represent the client to plead for the case in the legal proceedings before the court.

Vakalatnama gives limited powers to the advocate & only allows pleading in relation with the legal issues.

Illustration: The advocate can plead for the suit under Vakalatnama and the court may suggest a remedy to the party which is not binding but the party has the will to accept it or not.

Power of Attorney

As per Section 1A of Powers of Attorney Act, 1882, "*Power-of-attorney*" includes any instrument empowering a specified person to act for and in the name of the person executing it.

Power of Attorney is a document which allows the representative to take decisions of the affairs on behalf of the client to the court.

Power of Attorney may not allow the advocate to plead in the case but the attorney can refer the client to an advocate.

Illustration: The Power of Attorney will give the power to the representative whether to accept the non-binding remedy suggested by the court or not.

Vakalatnama is the only valid authority for pleading the case by decree-holder to the advocate, whereas Power of attorney is the grant given to a registered advocate allowed to take decisions with respect to business affairs of the client. Vakalatnama doesn't offer the flexibility as that document only defines the pleading authority relationship between the advocate & the decree-holder. The court can offer flexibility in case of Power of attorney as there are certain business offers which a person can know & understand better while taking decisions which can benefit the court proceedings as well as the decree-holder provided sufficient proof is submitted to the court and the court is satisfied to grant the same.

K. Gopinath, CLA, GM/O/SCR

Section 10 deals with Doctrine of Res Sub-Judice. 'Res' means matter or litigation and Sub-Judice means pending (under judgment). Conjoining the two, it implies that the rule of Res Sub-Judice relates to a matter which is pending judicial enquiry. In other words, this rule applies where a matter is already pending before a competent court for the purpose of adjudication Section 10 of CPC deals with the stay of civil suits.

The object of the rule contained in Section-10 is to prevent courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of the same cause of action, the same subject-matter and the same relief. The policy of law is to confine a plaintiff to one litigation, thus obviating the possibility of two contradictory verdicts by one and the same court in respect of the same relief.

Conditions to be fulfilled for the rule of res sub-judice u/s.10 of the CPC:-

- ⇒ There must be two suits, one previously instituted and the other subsequently instituted.
- ⇒ The matter in issue in the subsequent suit must be directly and substantially in issue in the previous suit.
- ⇒ Both the suits must be between the same parties or their representatives.
- ⇒ The previously instituted suit must be pending in the same court in which the subsequent suit is brought or in any other court in India or in any court established or continued by the central Government or before the Supreme Court.
- ⇒ The Court in which the previous suit is instituted must have jurisdiction to grant the relief claimed in the subsequent suit.
- ⇒ Such parties must be litigating under the same title in both the suits.

Even where the provisions of Section 10 of the code do not strictly apply, a civil court has inherent power under Section-151 to stay a suit to achieve the ends of justice. Similarly, a Court has inherent power to consolidate different suits between the same parties in which the matter in issue is substantially the same.

The Rule of res-subjudice applies to trial of a suit and not the institution thereof. It also does not preclude a Court from passing interim orders, such as, grant of injunction or stay, appointment of receiver. It, however, applies to appeals and revisions.

K. Gopinath, CLA, GM/O/SCR

Moral Policing' is not the job of Internal Complaints Committee – ICC is not empowered to recommend disciplinary action when Complaint is rejected-

Complaint under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was filed by the Petitioner against Respondent No.3, who was working as the General Manager of the Respondent No. 1 Bank. The said complaint was referred to the Internal Complaints Committee (ICC) constituted by the Bank.

The constituted ICC, upon analysing the complaint, came to the conclusion that the relationship between the Petitioner and Respondent No.3 was based on personal grounds with mutual consent, and that the allegations of sexual, emotional and mental harassment were not substantiated by the Petitioner. Thus, the complaint against the Respondent No. 3, was rejected. However, the ICC did not stop there. The ICC went on to make an observation that the behaviour of the parties had been inappropriate and unbecoming of Officers/Employees of the Bank, and accordingly the ICC recommended the Competent Authority to take suitable action against the Petitioner and the Respondent No. 3, as deemed fit.

This report, thereafter, resulted in a charge-sheet being issued against the Petitioner, under the Bank Employees' (Discipline & Appeal) Regulations, 1977 and also on respondent-3. Against which, the Petitioner preferred the present writ petition contending that upon the sexual harassment complaint filed by the Petitioner being rejected, the ICC can merely, close the enquiry against R-3, and making the recommendation for taking action due to the alleged "unbecoming" conduct is contrary to Section 13(2) of the Act.

The question that arises is as to whether the ICC could have made a recommendation directing the competent authority to take action when the ICC concludes that the allegations are not substantiated and the complaint is not made out.

S.13 of the Act, contemplates various situations relevant to the inquiry report. Insofar as the ICC is concerned, two situations contemplated under S 13(2) and 13(3). As per the above provisions, if the allegations of sexual harassment or any other form of harassment, as contemplated under the Act, are not proved before

the ICC, the ICC can only recommend the employer to not take any action in the particular matter. However, the ICC, in the present case, has gone beyond its statutory mandate, as recognized under Section 13(2) of the Act. It has, in fact, given observations stating that both the parties i.e., the Petitioner and the Respondent No.3 have indulged in inappropriate/unbecoming conduct and indiscipline, and has recommended the competent authority to take suitable action against them. Giving such a recommendation is clearly beyond the jurisdiction of the ICC. Complaints of sexual harassment are filed with enormous reluctance. The power of the ICC to hold the enquiry and give a report ought to be within the scheme and the four corners of the statute itself. If a case of sexual harassment is not made out, the ICC can only conclude that no action is required to be taken. On the other hand, if a case of sexual harassment is made out, then the recommendation of the ICC can only be considered for taking appropriate action for misconduct, under the provisions of the service rules as contained within S 13(2) and 13(4) of the Act.

The High Court observed that 'Moral Policing' is not the job of the Management or of the ICC. Any consensual relationship among adults would not be the concern of the Management or of the ICC, so long as the said relationship does not affect the working and the discipline of the organization and is not contrary to the Rules or code of conduct binding on the said employees. It is only if a complaint is made of sexual harassment under the Act that the Management can constitute the ICC to enquire into the same. The ICC cannot make comments on the personal conduct of the parties and the ICC's jurisdiction would be restricted to the allegations of sexual harassment and whether a complaint is made out or not, to that effect.

The High Court, thus, held that the last paragraph of the recommendation of the ICC commenting on the conduct of the parties and recommending to the competent authority to take action against the Petitioner and Respondent No. 3, for their inappropriate disciplinary conduct, is not tenable and set aside. Consequently, the charge sheet to take disciplinary action against the Petitioner is liable to be quashed and is ordered accordingly. **[Bibha Pandey Vs PNB, W.P.(C) No.3249/2017 DOJ: 16.12.2020]**

B.R.R.Naidu, CLA/Con./SCR

YOURS LEGALLY**Erroneous decision by a proper forum attains finality inter parties unless assailed:**

The validity of an erroneous order made by a proper forum, if the parties to the lis do not challenge the same before a superior forum, was decided by the Supreme Court in the past and was again reiterated recently. The appellant before the Apex Court assailed order dated 1.2.2010 of the High Court which dismissed his Writ application. The predecessor of the appellant was granted the status of a statutory tenant. The predecessor of the respondent Nos. 1 & 2 Nadimuddin who was the original land owner, filed an application for resuming the lands for personal cultivation, but was rejected. Nadimuddin did not challenge the rejection till his death. The statutory certificate was then issued to the appellant predecessor. The respondents, sons of Nadimuddin, laid a fresh challenge to the certificate after the death of Nadimuddin and the Dy. Collector rejected it and the same was affirmed by Maharashtra Revenue Tribunal. Thereafter the respondents filed regular Civil Suit for declaration of title with regard to the suit lands. The suit was decreed but was reversed in appeal by the Extra Assistant Judge, Beed in regular Civil Appeal, inter alia rejecting that the Land Tribunal did not follow the procedure before issuance of the certificate. The dismissal of the suit attained finality as the respondents, legal heirs of Nadimuddin did not challenge it before any superior forum.

Wife of Nadimuddin and mother of the respondents, filed a fresh appeal before the Deputy Collector challenging the certificate only with respect to Survey No.202/AA contending that she was unaware till January 1981 of the mutation entries in the name of the appellants. The Deputy Collector by its order remanded the matter to the Additional Tehsildar. The Addl. Tehsildar held that in absence of proper entries in the tenants register, the predecessor of the appellant could not be held to be a protected tenant. The Dy. Collector in the appeal preferred by the appellant, set aside the order of the Addl. Tehsildar and ruled in favour of the appellant upholding the declaration of ownership rights under the Act. Afsar Begum preferred a revision which was allowed by the Tribunal, affirmed by the Single Judge and the Division Bench, were impugned before the Supreme Court.

The Apex Court held: "11. It was not the case of the respondents that the statutory certificate had been obtained by any fraud or misrepresentation by the appellant in which case undoubtedly it would have been open for reconsideration. The conclusion of the High Court that the issuance of the certificate

was "fictitious, unfounded and useless" by reasons of being null and void is therefore completely unsustainable. The decisions on the earlier occasion had been rendered by a proper competent forum, after hearing the parties and on perusal of records. An erroneous decision by a proper forum, unless assailed before a superior forum will attain finality inter parties.

12. In the facts of the present case, we find it very difficult to allow the appellant to be vexed twice, once by the sons of the land owner, then by his widow. We also cannot lose sight of the facts in the present case that the ultimate beneficiary of the fresh orders shall be the respondents even though they have lost their own challenge. Resultantly what was denied to the respondents directly shall now be available to them indirectly as Afsar Begum has since been deceased. The fresh round of litigation started by Afsar Begum was a mere subterfuge and an abuse of the process of law and courts by essentially what is a proxy litigation."

The Supreme Court referred to its earlier decision in *R. Unnikrishnan & another (supra)* wherein reliance was placed on its earlier decision in *Daryao Vs. State of U.P.*, where it was held that it is in the interest of the public at large that a finality should attach to the binding decisions pronounced by courts of competent jurisdiction, and it is also in the public interest that individuals should not be vexed twice over with the same kind of litigation.

In *Mohanlal Goenka v. BenoyKishna Mukherjeethe* the Supreme Court observed: "23. There is ample authority for the proposition that even an erroneous decision on a question of law operates as 'res judicata' between the parties to it. The correctness or otherwise of a judicial decision has no bearing upon the question whether or not it operates as 'res judicata'."

In *State of W.B. v. Hemant Kumar Bhattacharjee* the Apex Court reiterated the above principles in the following words: "14. A wrong decision by a court having jurisdiction is as much binding between the parties as a right one and may be superseded only by appeals to higher tribunals or other procedure like review which the law provides."

In the light of the above past orders, the Apex Court allowed the appeal and set aside the impugned orders. [*Vaijinath v. Afsar Begum*. 2020 (2) APEX COURT J 0731 : 2020 (3) CIVIL COURT CASES 0423. DOJ – 30.01.2020].

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

TREATISE ON**A & C Act, 1996****Commencement of arbitral proceedings:**

When arbitral proceedings commence in a case is an crucial because aspects like limitation, applicable law (as in case of applicability of amendments of 2015 or 2019) etc. are based on it. Section 21 of the Arbitration and Conciliation Act, 1996 deals with it. It states that Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

The Supreme Court held that the purpose of Section 21 is to specify, in the absence of a provision in the arbitration agreement as to when an arbitral proceedings in regard to a dispute commences. This becomes relevant for the purpose of Section 43 of the Act. Section 43 (1) provides that the Limitation Act 1963 shall apply to arbitrations as it applies to proceedings in courts. Section 43 (2) provides that for the purposes of Section 43 and the Limitation Act, 1963, an arbitration shall be deemed to have commenced on the date referred to in Section 21 of the Act. Having regard to Section 43 of the Act, any claim made beyond the period of limitation prescribed by the Limitation Act, 1963 will be barred by limitation and the arbitral tribunal will have to reject such claims as barred by limitation.

The Supreme Court further held that as Limitation Act, 1963 is made applicable to arbitrations, there is a need to specify the date on which the arbitration is deemed to be instituted or commenced as that will decide whether the proceedings are barred by limitation or not. Section 3 of Limitation Act, 1963 specifies the date of institution for suit, but does not specify the date of 'institution' for arbitration proceedings. Section 21 of the Act supplies the omission.

But for Section 21, there would be considerable confusion as to what would be the date of 'institution' in regard to the arbitration proceedings. It will be possible for the Respondent in an arbitration to argue that the limitation has to be calculated as on the date on which statement of claim was filed, or the date on which the arbitrator entered upon the reference, or the

date on which the arbitrator was appointed by the court, or the date on which the application was filed under Section 11 of the Act. In view of Section 21 of the Act providing that the arbitration proceedings shall be deemed to commence on the date on which "the request for that dispute to be referred to arbitration is received by the Respondent" the said confusion is cleared. Therefore the purpose of Section 21 of the Act is to determine the date of commencement of the arbitration proceedings, relevant mainly for deciding whether the claims of the claimant are barred by limitation or not.

As far as counter claims are concerned, there is no room for ambiguity in regard to the relevant date for determining the limitation. Section 3(2)(b) of Limitation Act, 1963 provides that in regard to a counter claim in suits, the date on which the counter claim is made in court shall be deemed to be the date of institution of the counter claim. As Limitation Act, 1963 is made applicable to arbitrations, in the case of a counter claim by a Respondent in an arbitral proceedings, the date on which the counter claim is made before the arbitrator will be the date of "institution" in so far as counter claim is concerned.

There is, therefore, no need to provide a date of 'commencement' as in the case of claims of a claimant. Section 21 of the Act is therefore not relevant for counter claims. There is however one exception. Where the Respondent against whom a claim is made, had also made a claim against the claimant and sought arbitration by serving a notice to the claimant but subsequently raises that claim as a counter claim in the arbitration proceedings initiated by the claimant, instead of filing a separate application under Section 11 of the Act, the limitation for such counter claim should be computed, as on the date of service of notice of such claim on the claimant and not on the date of filing of the counter claim. **State of Goa Vs. Praveen Enterprises, AIR 2011 SC 3814]**

N. Murali Krishna, Sr.Law Officer

Joke**Good Lawyer Vs Great Lawyer**

What's the difference between a good lawyer and a great lawyer? A good lawyer knows the law. A great lawyer knows the judge.