



Lex Info

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Vol -IV

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Page No.	Article
2	The Maternity Benefit Act, 1961
3	Right To Information Series..... Contd.
4	Supreme Court held that proceedings instituted under Consumer Protection Act, 1986 not to be transferred to fora created under 2019 Act with newly prescribed pecuniary limits.
5	Difference Between: The Law of Limitation and Prescription FAQ: Who is legal representative?
6	The Code on Occupational Safety, Health & Working Conditions 2020
7	Yours Legally - Order refusing to condone delay is appealable
8	Treatise on Arbitration & Conciliation Act, 1996

Legal Maxim

Pacta Sunt Servanda— It is a latin term and means “ agreements must be kept” . It is a fundamental principle of law and it forms the basis of the common law of contracts. When two parties willingly and knowingly enter into a contract, the terms of the contract should be upheld by both the parties.

ABC OF ACTS**The Maternity Benefit Act, 1961
(No. 53 of 1961)**

The Maternity Benefit Act aims to regulate the employment of women in certain periods before and after childbirth, to provide for maternity benefits including maternity leave, wages, bonus, nursing breaks etc. and to protect the dignity of motherhood and the dignity of a new person by providing for full and healthy maintenance of the women and her child at this important time when she is not working. This Act contains 30 sections. This act is enacted on the basis of article 39(e) & (f) of Constitution: "State shall, in particular, direct its policy towards securing the health & strength of workers, men and & women".

The Act extends to whole of India. In the first instance, to every establishment being a factory, mine or plantation in which 10 or more persons are or were employed on any day of the preceding 12 months. (including any such establishment belonging to Government & to every establishment wherein persons are employed for the exhibition of equestrian (riding), acrobatic and other performances). The Central Industrial Relations Machinery (CIRM) in the Ministry of Labour is responsible for enforcing this Act.

U/S-5(2) of the Act, the woman employee must work for not less than 80 Days in the 12 months immediately preceding the date of her expected delivery and ten weeks before the date of her expected delivery. At that time, she should produce a certificate that she is pregnant. She should give written notice to the employer about 7 weeks before the date of her delivery that she will be absent before and after her delivery. She should also name the person to whom payment will be made in case she cannot take it herself.

Under the 2017 Amendment the Act, Maternity leave is increased from 12 weeks to 26 weeks wherein the pre-natal leave shall not exceed more than 8 weeks preceding delivery. Woman employee can claim up to 6 weeks leave with maternity benefit immediately from the date of such miscarriage or termination of pregnancy as the case may be. The increased Maternity Benefit is only available for the first two children. A woman having two or more surviving children shall only be entitled to 12 weeks of Maternity Benefit of which not more than 6 shall be taken prior to the date of the expected delivery.

A woman who adopts a child below the age of 3 months, or a commissioning mother will be entitled to Maternity Benefit for a period of 12 (twelve) weeks from the date the child is handed over to the adopting mother or the commissioning mother. For any Establishment having 50+ employees, it is mandatory to have crèche facility. The woman is also to be allowed 4 (four) visits a day to the creche, which will include the interval for rest allowed to her. An employer may allow her to work

from home post the period of Maternity Benefit. The conditions for working from home may be mutually agreed between the employer and the woman. Every establishment will be required to provide woman at the time of her initial appointment, information about every benefit available under the Act.

Cash benefits given under this Act are : i) Leave of 26 weeks (8 weeks before expected date of delivery & 18 weeks after expected date of delivery) A medical bonus and in case of miscarriage, leave of 8 weeks, immediately after the date of miscarriage. An additional leave with pay up to one month with Proof of illness. For undergoing Tubectomy operation, woman employee is entitled for leave with wages for a period of 2 weeks.

Non-cash benefits extended are: i) No discharge or dismissal when on maternity leave ii) Light work for 10 weeks before delivery, iii) No Charge to be made on her in any of the conditions to her Job while on Maternity Leave, iv) Two Nursing Breaks until the child will become the (15) fifteen months old, v) No deduction from the Normal and Usual daily wages of a woman entitled to Maternity Benefit under the provisions of this Act. In case the Woman dies during this period, the maternity benefit shall be payable only for the days up to and including the day of her death. Every establishment having more than 50 employees shall have the facility of creche. Employer shall allow 4 visits a day to the creche by the women, which shall also include the interval for rest allowed to her.

Legal obligations under this Act are i) no employer shall knowingly employ a woman in establishment during 6 weeks following date of her delivery or miscarriage, ii) no women shall work in any establishment during the during the 6 weeks immediately the day following her delivery. It shall be unlawful for her employer to discharge or dismiss her on account of such misconduct. In case of gross misconduct, the employee in writing can communicate about depriving such benefit, and further there lies an appeal to the authority prescribed by law.

Rights, Duty & Penalty of Employer: Ø An abstract of the provisions of this Act and the rules made there under in the language or languages of the locality shall be exhibited in a conspicuous place by the employer in every part of the establishment in which women are employed. Every employer shall prepare and maintain such registers, records and muster-rolls and in such manner as may be prescribed under the Maternity Act.

Penalty for contravention of Act: Ø imprisonment which shall not be less than (03) three months but which may extend to (01) one year and Ø fine which shall not be less than Rs: 2000/-, which may extend to Rs: 5000/-.

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

RTI Series**Information on Section 11 continues:**

Employees Educational certificates to be supplied:

Information about the attendance of an employee as Gramin Dak Sevak in Etah Division, certified copies of educational certificates submitted by him who applied for the post of GDS were sought under the RTI Act, 2005. The information was denied under section 11 (1) of RTI Act. During the hearing of CIC, the Superintendent of Post Offices submitted that the information was not furnished to the appellant since the information related to third party and sought consent from concerned third party.

CIC observed that the CPIO must consider the nature of information and RTI queries before invoking section 11 of RTI Act. It further observed that the appellant had sought the educational certificates of a public employee on the basis of which he was recruited by the Department. Since such documents constitute the eligibility criteria of a public employee, the disclosure of such information is on public interest. The CIC directed the CPIO to provide complete information along with certified copies of educational certificates of the employee as Gramin Dak Sevak in Etah Division, within five days. [Complaint No.: CIC/POSTS/C/2017/158760. Pramod Kumar v. CPIO, Department of Posts. D.O.O – 03.08.2018].

Reply to show-cause notice to be provided:

In an interesting case wherein the CIC had tackled its own Deputy Registrar, imposed a compensation of Rs. 3000/- to be paid to the appellant. The appellant in the said case sought the submissions made by five PIOs in response to the show-cause notice issued by the CIC and the file notings containing the decision thereof of the CIC. The PIO refused the same under Section 11 without relying on Section 8(1) & 9, stating that the information pertained to 3rd parties. The CIC ordered furnishing of information before 10.05.2012 and granted a compensation of Rs.3000/- to be paid to the appellant before 01.06.2012 [Appeal No. CIC/WB/A/2010/000712/SG. DOO- 10.06.2012].

Expenditure from public exchequer cannot be treated as personal information:

In UOI v. Balendra Kumar [WP (c) No. 120/2010 & CM Appl. 233/2010] the Delhi High Court had upheld the decision of the CIC, which had overruled the refusal to furnish information by invoking Section 8(1)(j) read with Section 11 of the RTI Act, 2005. The RTI application seeking information related to the applicant's complaint (about misuse of government money in the Embassy of India, Ankara, Turkey in March 2007) made to the CVC on 13.04.2007, which the CVC forwarded to the Ministry of External Affairs. The applicant had sought (a) copies of all departmental notings including recorded by CVO/Inquiry Officer/Cadre Controlling Authority/Disciplinary Authority/any other official(s), if any; (b) copies of all correspondences between Department and alleged officer (s)/other officer(s) pertaining to the matter but excluding copies of complaint & (c) copies of all notes recorded upon oral inquiry.

The CPIO declined the information u/s 8 (1)(j) of the RTI Act. Aggrieved, the applicant filed the First Appeal, which was also turned down. In the 2nd appeal filed before the CIC it was observed by the CIC that there was no merit

in the denial of information since the public interest in this case far outweighs any harm done to protected interests. Accordingly, the CPIO was directed to provide all the information sought by the applicant by 15.06.2009.

The CPIO, MEA thereafter sent a letter dated 15.06.2009 seeking review of CIC's order dated 18.05.2009 in view of the objection raised by the 3rd party i.e., Ambassador of India at Turkey during the relevant time. The MEA invoked provisions of Section 11 of the RTI Act. In the hearing held on 17.08.2009 the CVO's file containing the inquiry report and other relevant documents were brought in a sealed cover to the office of the CIC, and the same were examined by the CIC. The Ambassador was also heard by the CIC on 28.08.2009 and she produced a few documents before the CIC clarifying the complaint against her and about the outcome of the investigation.

It was urged by the MEA that that since the information sought related to a case which had been closed after completion of the enquiry, the disclosure of the information sought would indicate lack of confidence in the investigations conducted by the MEA and the CVC. The CIC rejected this contention on the ground that neither the RTI Act 2005 nor any other law in force in India states that information pertaining to a closed case cannot be disclosed.

The Delhi High Court, in its order, had agreed with the CIC's observation that the information was not by any stretch of imagination personal information pertaining to the Ambassador and was related to the misappropriation of government money. The transactions with respect to government money is anyway liable for a government audit and hence there can be no confidentiality and/or secrecy in divulging such information since the expenditure of government money by a government official in the official capacity as office expenses cannot be termed/categorized as personal information.

An apprehension was expressed by the MEA before the CIC that the disclosure of such classified information could adversely impact the morale of the members of the Ministry, especially if reported in the media, thus damaging the reputation of a senior official as well as the Ministry. Hence, the Ministry wanted that the information be withheld from disclosure categorizing the said information as personal information.

The CIC negated this apprehension by observing: "In the instant case the disclosure of information relating to alleged charges of corruption and misappropriation of government money, wherein after a detailed investigation/ inquiry, the name and reputation of the public official concerned, had been declared unblemished, is actually crucial in strengthening the public faith in the functioning of the Ministry and the CVC. Since the allegation and/or complaint, vigilance enquiry and the enquiry reports were in respect of the Ambassador in her official capacity and related to her office and acts/omissions therein and also because all the information sought by the Appellant exists in official records already, hence the information cannot be classified as personal nor exemption be sought on that ground." Thereafter, the CIC ordered furnishing of information by 05.10.2009 by applying severance clause 10 (1) of the RTI Act, 2005, if required.

The Delhi High Court, while dismissing the WP filed by the MEA held: "No authority can proceed on the assumption that an information ordered to be disclosed will be misused. The mere expression of an apprehension of possible misuse of information cannot justify non-disclosure of information."

M.K. Shaji, CLA/RWF

Supreme Court held that proceedings instituted under Consumer Protection Act, 1986 not to be transferred to fora created under 2019 Act with newly prescribed pecuniary limits.

In the recent judgment of *Neena Aneja and Ors. v Jai Prakash Associates Ltd.*, the division bench of the Supreme Court while discussing the matter of whether a complaint which was filed and registered under the Act of 1986, before the new Act of 2019 came into force, has to be entertained under the provisions of the erstwhile legislation, passed references to what the intent behind the new legislation was. The change in pecuniary jurisdiction led to dispute in regard to transfer of cases between different forums.

The Hon'ble bench analysed the Statement of Objects and Reasons of the new Act to establish background for the case and to reflect legislative intent. On the same, Court noted that *"The Act of 2019, as indicated by its long title, is enacted to provide 'for protection of the interests of consumers'. The Statement of Objects and Reasons took note of the tardy disposal of cases under the erstwhile legislation. Thus, the necessity of inducing speed in disposal was to protect the rights and interests of consumers. The Act of 2019 has taken note of the evolution of consumer markets by the proliferation of products and services in light of global supply chains, e-commerce and international trade. New markets have provided a wider range of access to consumers. But at the same time, consumers are vulnerable to exploitation through unfair and unethical business practices. The Act has sought to address 'the myriad and constantly emerging vulnerabilities of the consumers'. The recurring theme in the new legislation is the protection of consumers which is sought to be strengthened by procedural interventions such as strengthening class actions and introducing mediation as an alternate forum of dispute resolution."*

The Court further went on to reflect how the legislative intent must have been to protect and support consumers and hence if the cases need to transfer between forums on enactment of it would defeat its own purpose.

The Court held such transfer of cases, *"will seriously dislocate the interests of consumers in a manner which defeats the object of the legislation, which is to protect and promote their welfare. Clear words indicative of either an express intent or an intent by necessary implication would be necessary to achieve this result. The Act of 2019 contains no such indication."*

The bench of **Dr. DY Chandrachud*** and MR Shah, JJ of **Supreme Court** has held that the proceedings instituted before the commencement of the Consumer Protection Act 2019 on 20 July 2020 would continue before the fora corresponding to those under the Consumer Protection Act 1986 (the National Commission, State Commissions and District Commissions) and not be transferred in terms of the pecuniary jurisdiction set for the fora established under the Act of 2019 [*Neena Aneja v. Jai Prakash Associates Ltd.*, 2021 SCC OnLine SC 225, decided on 16.03.2021].

M.V. Ramana, Law Officer/HQ

KNOW OUR CONSTITUTION

Article 46: Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

Article 47: Duty of the State to raise the level of nutrition and the standard of living and to improve public health. The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

Difference between**Law of Limitation and
Law of Prescription****FAQ****Who is legal representative?****Law of Prescription**

The Indian Limitation Act deals with the Law of Prescription as well the Law of Limitation. Law of Prescription prescribes the period at the expiry of which not only the judicial remedy is barred but a substantive right is acquired or extinguished. Prescription is the acquisition of title by possession of property for the prescribed period provided that possession was neither forcible nor clandestine (hidden) nor permissive. Such possession acquires its title on account of the fact that those who had interest in the property have allowed their rights to get barred by not caring to pursue their remedies within the time allowed by law to enforce those remedies.

Law of Limitation

Law of Limitation limits the time after which a suit or other proceeding cannot be maintained in a Court of Justice. Under Section 2(j) of the Limitation Act, 1963, the period of limitation for any appeal, appeal or application will be prescribed as per a schedule. The provisions of this Act have been calculated in accordance with. The statute of the law indicates the withholding from the deadline for different legal actions that a victim may take against him or herself and seek trial or remedy or religion before the court. Where a suit is initiated after the limitation period, it will fall prey to the statute of limitation. Protecting the lengthy process of punishing a person indirectly without a crime is the main and basic purpose of the statute of limitation.

The following are some of the main differences of the law of limitation:

1. The law of limitation is a part of adjective law barring the remedy after expiry of the period of limitation, while the law of prescription is a part of the substantive law and it effects the substantive right of a person;
2. The Limitation Act prescribes the period after the expiry of which a suit cannot be filed in the court, while a right through prescription arises after the expiry of definite period of time.
3. The law of limitation imposes restrictions only on the judicial remedies and not on extra judicial remedies, while a right extinguished due to prescriptions cannot be enforced by any judicial or extra judicial method.

The term, 'legal representative' has been defined in section 2(11) of the Civil Procedure Code. According to it, 'legal representative' means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character, the person on whom the estate devolves on the death of the party so suing or sued.

Section 2(19) of the Income Tax Act, 1961 states that the term "legal representative" "in the Income-tax Act, 1961 has the meaning assigned to it in clause (11) of section 2 of the Code of Civil Procedure, 1908. It is not necessary that the legal representative should be the beneficial owner of the estate. Nor need he be in possession of any property of the deceased. It is sufficient that the estate devolves on him.

It is clear from S.2 (11) of the CPC 1908 that the definition of the word "legal representative" is broad and comprehensive and covers two separate categories. Firstly, heirs or persons; who by statute hold the deceased's wealth. At the same time, however, with them and in the class itself, there is every person who intertwines with the estate of the deceased. Such a person is also a legal representative.

The Act expressly declares that the legal representative is deemed to be an assessee for the purpose of this Act. In order to be a legal representative under section 2(11), it is not necessary that a person should be a legal heir of a deceased person or that he should have a beneficial interest in the estate.

Also it is defined under Sec.2(g) of the Arbitration and Conciliation Act, 1996 that "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased, and, where a party acts in a representative character, the person on whom the estate devolves on the death of the party so acting.

Legal representative is a person who can be appointed by any person for the purpose of some specific work and the legal representative can be outsider, office assistant, etc. and whereas the legal heir is a person connected with blood relation who inherits the rights and liabilities only due to such relation. Legal representative is a personal representative with legal standing (as by Power of Attorney or the Executor of a Will).

CODE ON OCCUPATIONAL SAFETY, HEALTH & WORKING CONDITIONS 2020

The Code on Occupational Safety, Health & Working Conditions was framed based on the report of the 2nd National Commission on Labour. The Bill was passed by the Lok Sabha on 22.09.2020, and the Rajya Sabha on 23.09.2020. It got the presidential assent on 28.09.2020. However, the date of coming into force of the Code is yet to be notified in the official gazette.

It amalgamated / subsumed the following 13 Acts: The Factories Act, 1948, The Plantations Labour Act, 1951, The Mines Act, 1952, The Working Journalists and other Newspaper Employees (Conditions of Service and Miscellaneous Provisions) Act, 1955, The Working Journalists (Fixation of Rates of Wages) Act, 1958, The Motor Transport Workers Act, 1961, The Beedi and Cigar Workers (Conditions of Employment) Act, 1966, The Contract Labour (Regulation and Abolition) Act, 1970, The Sales Promotion Employees (Condition of Service) Act, 1976, The Inter-State Migrant workmen (Regulation of Employment and Conditions of Service) Act, 1979, The Cine Workers and Cinema Theatre Workers Act, 1981, The Dock Workers (Safety, Health and Welfare) Act, 1986 and The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.

Salient Features of the Code:

Definitions of some important words got amended as given below:

Contract Labour: “*Contract labour*” has been defined as a worker deemed to be employed in/in connection with the work of an establishment when he is hired for such work through a contractor, with or without the knowledge of the principal employer. The definition excludes any worker (other than a part-time employee) who is regularly employed by the contractor for any activity of his establishment and such worker's employment is governed by mutually accepted standards of conditions of employment and gets periodical increment in pay and other welfare benefits [Section 2(m) of the Code]

Employee: “*Employee*” means a person employed (whether expressly or impliedly) on wages by an establishment to do any skilled, unskilled, manual, operational, supervisory, managerial, administrative, technical, clerical or other work [Section 2(t) of the Code]. The definition of employee has been made uniform in all the new codes. Journalists working in electronic media / radio / other media have been brought in the ambit of “working journalists”.

Employer: “*Employer*” to be a person who employs, whether directly or through any person, or on his behalf, or on behalf of any person, one or more employees in his establishment, and includes, *inter alia*, the person/authority which has the ultimate control over the affairs of the establishment and contractor [Section 2(u) of the Code.]

Establishment: An “*establishment*” is (i) any place with ten (10) or more workers where any industry, trade, business, manufacturing or occupation is carried on; or (ii) a motor transport undertaking, newspaper establishment, audio-video production, building and other construction work or plantation with ten (10) or more workers; or (iii) factory in which ten (10) or more workers are employed; or (iv) a mine or port or vicinity of port where dock work is carried out [Section 2(v) of the Code]. The concept of “one registration” for all establishments having 10 or more employees has been introduced. But for all other codal provisions, the threshold has been fixed at 20 workers in a factory with power and 40 workers in a factory without power.

Hazardous Process: “*Hazardous process*” is any process or activity in relation to specific industries (set forth in Schedule I of the Code), where, unless special care is taken, raw/intermediate/finished/by-products, etc., as the case may be, would: Cause material impairment to the health of the persons engaged in or connected herewith; or Result in pollution of the general environment [Section 2(za) of the Code].

Principal Employer: A “*principal employer*” is (i) any person responsible for the supervision and control of the establishment where contract labour is employed or engaged; or (ii) the owner or the occupier of the factory and where a person has been named as the manager of the factory, the person so named [Section 2(z) of the Code].

Wages: “*Wages*”, comprise all remuneration such as salaries, allowances or otherwise, expressed in terms of money or capable of being so expressed which would be payable to a person in respect of his employment, whether express or implied, or of work done in such employment and includes basic pay, dearness allowance and retaining allowance, if any [Section 2(zj) of the Code]. However, wages do not include a) bonus; (b) value of accommodation or light, water, medical attendance; (c) employer contribution towards any pension or provident fund; (d) conveyance allowance; (e) sum paid to employed person to defray special expenses; (f) house rent allowance; (g) overtime allowance and (h) gratuity, etc.

(Contd... in next issue..)

M.K. Shaji, CLA/RWF

YOURS LEGALLY**Arbitration : Order refusing to condone delay is appealable**

Putting to rest the appealability or otherwise of an order refusing to condone delay under Section 34 (3) of the Arbitration & Conciliation Act, 1996 (ACA 1996), the Apex Court has held that such orders are indeed appealable. The matter reached the Supreme Court from an order of the single judge of Delhi High Court which dismissed an application filed for delay condonation for filing a challenge petition under Section 34 of ACA 1996. The High Court ruled that Section 34(3) which limits the power of the courts to condone delay up to 30 days (beyond permitted 3 months) cannot be stretched in view of the words “but not thereafter” used therein.

The Delhi High Court had relied upon earlier order of Bombay HC in *State of Maharashtra v. Ramdas Construction Co.* [2006 SCC Online Bom. 690. DOJ – 12.07.2006] and SC’s order in *BGS SGS Soma JV v. NHPC Ltd.* [2000 (4) SCC 234. DOJ- 10.12.2019] and held that the order refusing to condone the delay was not appealable under S.37 of ACA 1996.

In the *Ramdas* case, the Bombay High Court held:

“7. In the case in hand, since it is not in dispute nor it can be disputed that the impugned order does not deal with the issue as to whether the arbitral award should be set aside or not and it merely deals with the issue in relation to the delay in filing an application for setting aside of the award, evidently the impugned order cannot be said to be an appealable order within the meaning of the said expression under Section 37(1)(b) of the Act.”

In Para 8 it was held that an application u/s 34 has to necessarily satisfy the requirements of both S.34 (2) and (3), but not merely any one. It was held in Para 9 that the proceedings of delay condonation, preceding the enquiry for setting aside/ refusing to set aside an award, does not come under the ambit of S.37(1)(b) and hence not appealable.

The Apex Court held in *BGS SGS Soma* case, by placing reliance on its earlier order in *Kandla Export Corporation v. OCI Corporation* [(2018) 14 SCC 715] that a refusal to entertain an application under section 34 on the basis of lack of jurisdiction would not amount to “refusing to set aside an arbitral award under section 34”. The SC concluded that the High Court had failed to appreciate that the refusal to set aside the Award should have been under section 34, i.e., after the court hearing Section 34 petition on merits and thereafter dismissing the same. Resultantly, the SC concluded that the Appeal was not maintainable before the High Court, and could not have been decided on the basis on section 37(1)(c).

The appellant approached the Apex Court and the question which fell for consideration was whether the delay in filing an application under Section 34 of ACA 1996 is appealable under Section 37 (1)(c) of ACA 1996 or not. S. 37 (1) (c) lays down for preferring an appeal against an order “setting aside or refusing to set aside an arbitral award u/s 34”.

The appellant contended that:

- 1) The refusal to condone the delay amounts to refusal to set aside an award and hence appeal is maintainable u/s 37;
- 2) S 39 of 1940 Act permitted appeal against an order refusing to condone the delay and S.39 of 1940 Act is *pari materia* to S.37 of the ACA 1996;
- 3) The refusal to condone the delay assigns finality to the Award and hence is appealable &
- 4) The words “u/s 34” used in S.37 (1) (c) includes S.34 (3), under which a court may refuse to condone the delay, thus rendering it appealable u/s 37 of ACA 1996.

The respondent objected that:

- 1) Section 39 of the 1940 Act and Section 37 of the Act are not *pari materia* and S.37 needs to be interpreted on its own terms;
- 2) ACA 1996 envisaged minimal judicial interference and the non-obstante clause in S.37 restricts the scope of appeal to what is stated therein;
- 3) The words “u/s 34” is confined to an order “setting aside or refusing to set aside an arbitral award” &
- 4) Refusal to set aside needs to be on merits to entail an appeal, but cannot be on some preliminary ground.

The SC held that the expression “under Section 34” extends to S. 34(3) as well and is not merely confined to S. 34(2). It further reasoned that the reference to sub-section (2) & (3) of Section 16, in S.37 (2) (a) evidences that when deemed necessary, the legislature will restrict the applicability only to a part of the section as opposed to a section in its entirety. Hence, the reference to S. 34 in S.37 covers the entire S.34. It was also observed that the ultimate effect of refusing to condone the delay results in refusal to set aside the award, thus making it an appealable order. Held, S. 39 (1) (vi) of 1940 Act is in *pari materia* to S. 37 (1) (c) of ACA 1996 and the “effect doctrine” was inbuilt in S.37. The Apex Court further held that no breach of S.5 (Extent of Judicial intervention) can be alleged in view of the words “except where so provided in this Part”, since S.37 is a provision in Part -I of ACA 1996. Held, an appeal u/s 37 (1) (c) is maintainable against an order refusing to condone the delay in filing an application u/s 34 to set aside an award. [*Chintels India Ltd. v. Bhayana Builders Pvt. Ltd.* CA No. 4028/2020. DOJ – 11.02.2021]

M.K. Shaji, CLA/RWF

TREATISE ON**A & C Act, 1996****Default of a party: Treatment under Arbitration and Conciliation Act, 1996:**

Arbitration and Conciliation Act, 1996 has a separate provision for default of a party which is not similar to Code of Civil Procedure, 1908. People conversant with CPC, 1908 often think that same procedure is also applies to arbitration proceedings. Let us have a close look at provisions of CPC with regard to appearance and default of the parties.

Order IX of the Code of Civil Procedure deals with the appearance of parties and the consequences of the non-appearance of parties. In terms of *Rule 1 of Order IX* of the Code of Civil Procedure, the parties to the suit are required to attend the court either in person or by their pleaders on the day fixed in the summons. Either the plaintiff or a defendant, when ordered to appear in person, do not appear before the court and neither show the sufficient cause for his non-appearance, the court is empowered (i) If the plaintiff does not appear, dismiss the suit; (ii) If the defendant does not appear, pass an *ex-parte* order, in terms of Rule 12 of Order IX. Further, when neither the plaintiff nor the defendant appears before the court when the suit is called for hearing, then the court is empowered to dismiss the suit under *Rule 3 of Order IX*.

However, such is not the case with Arbitration and Conciliation Act, 1996. Section 25 of Arbitration and Conciliation Act, 1996 states as follows:

Unless otherwise agreed by the parties, where, without showing sufficient cause,—

(a) the claimant fails to communicate his statement of claim in accordance with sub-section (1) of section 23, the arbitral tribunal shall terminate the proceedings;

(b) the respondent fails to communicate his statement of defence in accordance with sub-section (1) of section 23, the arbitral tribunal shall continue the proceedings without treating that failure in itself as an admission of the allegations by the claimant and shall have the discretion to treat the right of the respondent to file such statement of defence as having been forfeited.

(c) a party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it.

Section 25 provides the following three situations viz. Claimant failing to communicate his statement of claim; Respondent fails to communicate his statement of defence; One of the parties fail to appear at an oral hearing or to produce documentary evidence.

Section 25(a) provides that when the claimant fails to communicate his statement of claim, then the arbitral tribunal is empowered to terminate the proceedings. However, when claimant submits his claim statement, but the Respondent fails to communicate his statement of defence, then Arbitral Tribunal cannot pass an *ex parte* order against the respondent like a civil court. AT has to continue the proceedings without treating that failure in itself as an admission of the allegations by the claimant and shall have the discretion to treat the right of the respondent to file such statement of defence as having been forfeited. However, even if one of the parties fail to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it. In any circumstances, AT is not empowered to pass any *ex-parte* order.

An interesting case before the Hon'ble Supreme Court where the court has an occasion to consider the words "without showing sufficient cause" used in Section 25. Question before the Court was "Whether arbitral tribunal can terminate the proceeding under Section 25(a) due to non-filing of claim statement by the claimant and whether it has jurisdiction to consider the application for recall of the order terminating the proceedings on sufficient cause being shown by the claimant?"

The Hon'ble Court observed that every tribunal has inherent powers to review its order on the grounds of a procedural defect. It was held that arbitral tribunal, being a quasi-judicial authority, is vested with the power to invoke procedural review. The Court also stated that there is no distinction between the statutory tribunal constituted under the statutory provisions or Constitution in so far as the power of procedural review is concerned. It was further observed that Section 19, which provides that arbitral tribunal shall not be bound by the rules of procedure as contained in CPC, cannot be read to mean that arbitral tribunal is incapacitated in drawing sustenance from any provisions of CPC.

The Hon'ble Supreme Court thus held that the scheme of Section 25 of the Act clearly indicates that on sufficient cause being shown, the statement of claim can be permitted to be filed even after the time as fixed by Section 23(1) has expired. Thus, even after passing the order of terminating the proceedings, if sufficient cause is shown, the claims of statement can be accepted by the arbitral tribunal by accepting the show-cause and there is no lack of the jurisdiction in the arbitral tribunal to recall the earlier order on sufficient cause being shown. [*Srei Infrastructure Finance Limited v. Tuff Drilling Private Limited*, Civil Appeal No. 15036 of 2017]

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