Lex Info

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(from Law Branch, South Central Railway)

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

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

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Legal Maxim

Salus populi est suprema lex *– The welfare of the people is the supreme law.*

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 Contempt of Courts Act, 1971 (Act 70 of 1971)

Contd… from last issue

S-4 & 5 provide that where the contempt of court has been committed by a company with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such persons shall also be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of such director, manager, secretary or other officer.

A person who is accused of Civil Contempt of case can take the following defences:

In case there is lack of knowledge of the order - a person cannot be held liable for Contempt of Court if he does not know the order given by the court or he claims to be unaware of the order. There is a duty binding on the successful party by the courts that the order that has passed should be served to the Individual by the post or personally or through the certified copy. It can be successfully pleaded by the contemnor that the certified copy of the order was not formally served to him. In case there is disobedience or the breach done - if someone is pleading under this defence then he can say that the act done by him was not done wilfully, it was just a mere accident or he/she can say that it is beyond their control. But this pleading can only be successful if it found to be reasonable otherwise your plead can be discarded.

In case the order that has disobeyed should be vague or ambiguous- If the order passed by the court is vague or ambiguous or this order is not specific or complete in itself then a person can get the defence of contempt if he says something against that order.

In case Orders involve more than one reasonable interpretation - If the contempt of any order declared by the court and the order seems to be given more than one reasonable and rational interpretation and the respondent adopts one of those interpretations and works in accordance with that then he will not be liable for Contempt of Court.

In case the Command of the order is impossible - If compliance of the order is impossible or it cannot be done easily then it would be taken as a defence in the case of Contempt of Court. However, one should differentiate the case of impossibility with the case of mere difficulties. Because this defence can be given only in the case of the impossibility of doing an order.

S.12 of the Contempt of Court Act, 1971 deals with the punishment for Contempt of Court. High Court and the Supreme Court have been given the power to punish someone for the Contempt of Court. Section 12(1) of this Act states that a person who alleged with the Contempt of Court can be punished with simple imprisonment and this imprisonment can extend to six months, or with fine which may extend to two thousand rupees or can be of both type punishments.

S.13 has been added in the Contempt of Court Act, 1971 after amendment in 2006. The new Act may be called The Contempt of Court (Amendment) Act, 2006. This Section tells that contempt of court cannot be punished under certain circumstances or certain cases.

S.13(a) of the Contempt of Court (Amendment) Act, 2006 states that no Court under this Act shall be punished for Contempt of Court unless it is satisfied that the Contempt is of such a nature that it substantially interferes or tend to substantially interfere with the due course of Justice. S.13(b) of this Act states that the court may give the defence on the justification of truth if it finds that the act done in the public interest and the request for invoking that defence is *bona fide.*

S.14 of the Contempt of Court deals with the procedure of contempt proceeding in the face of the court of record whereas S.15 of this Act deals with the procedure of the contempt proceeding outside the court of records.

S.16 provides that a judge, magistrate or other person acting judicially shall also be liable for contempt of his own court or of any other court in the same manner as any other individual is liable and the provisions of this Act shall, so far as may be, apply accordingly.

S.20 of the Contempt of Court Act, 1971 deals with the limitation for the action of Contempt. It states that no court shall initiate any proceedings of contempt in two conditions viz. either the proceedings are on his own motion, after the period of one year from the date on which the contempt is alleged to have been committed.

S. 21 of the Contempt of Court Act,1971 provides that this Act not to apply to Nyaya Panchayats or other village courts. Nothing contained in this Act shall apply in relation to contempt of Nyaya Panchayats or other village courts, by whatever name known, for the administration of justice, established under any law.

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

RTI Series

Contd… from last issue

Difference between Section 18 & 19:-

In re Chief Information Commissioner v. State of Manipur [AIR 2012 SC 864 dated 12.12.2011] Hon'ble Supreme Court has ruled that the Information commission has no power to direct to furnish information, while exercising its power under Section 18. Information Commission can direct a PIO to furnish information only under section 19 (8). The remedy of section 18 has been given in section 20. The only order which can be passed under section 18 is an order of penalty when the PIO is found guilty. The Apex Court has made it clear that section 18 and 19 of the Act serve two different purposes and lay down two different procedures and they provide two different remedies. One cannot be a substitute for other.

In the above case the Apex Court observed as follows:

"...29. If we look at Section 18 of the Act it appears that the powers under Section 18 have been categorized under clauses (a) to (f) of Section 18(1). Under clauses (a) to (f) of Section 18(1) of the Act the Central Information Commission or the State Information Commission, as the case may be, may receive and inquire into complaint of any person who has been refused access to any information requested under this Act [Section 18(1)(b)] or has been given incomplete, misleading or false information under the Act [Section 18(1)(e)] or has not been given a response to a request for information or access to information within time limits specified under the Act [Section 18(1)(c). We are not concerned with provision of Section 18(1)(a) or 18(1)(d) of the Act. Here we are concerned with the residuary provision under Section 18(1)(f) of the Act. Under Section 18(3) of the Act the Central Information Commission or State Information Commission, as the case may be, while inquiring into any matter in this Section has the same powers as are vested in a civil court while trying a suit in respect of certain matters specified in Section 18(3)(a) to (f). Under Section 18(4) which is a non-obstante clause, the Central Information Commission or the State Information Commission, as the case may be, may examine any record to which the Act applies and which is under the control of the public authority and such records cannot be withheld from it on any ground.

M.K. Shaji, CLA/RWF

KNOW OUR CONSTITUTION

Article 60— Oath or affirmation by the President Every President and every person acting as President or discharging the functions of the President shall, before entering upon his office, make and subscribe in the presence of the Chief Justice of India or, in his absence, the senior most Judge of the Supreme Court available, an oath or affirmation in the following form, that is to say swear in the name of God I, A B, do that I solemnly affirm will faithfully execute the office of President (or discharge the functions of the President) of India and will do the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well being of the people of India

Article 61—Procedure for impeachment of the President

(1) When a President is to be impeached for violation of the Constitution, the charge shall be preferred by either House of Parliament

(2) No such charge shall be preferred unless (a) the proposal to prefer such charge is contained in a resolution which has been moved after at least fourteen days' notice in writing signed by not less than one fourth of the total number of members of the House has been given of their intention to move the resolution, and (b) such resolution has been passed by a majority of not less than two thirds of the total membership of the House

(3) When a charge has been so preferred by either House of Parliament, the other House shall investigate the charge or cause the charge to be investigated and the President shall have the right to appear and to be represented as such investigation

(4) If as a result of the investigation a resolution is passed by a majority of not less than two thirds of the total membership of the House by which the charge was investigated or cause to be investigated, declaring that the charge preferred against the President has been sustained, such resolution shall have the effect of removing the President from his office as from the date on which the resolution is so passed.

The Mandatory Requirement for issue of Notice under Section 21 of the Arbitration & Conciliation Act, 1996 (as amended) – Legal Position

In the case of Alupro Building Systems Pvt. Ltd. vs. Ozone Overseas Pvt. Ltd. 2017 SCC Online Del 7228 [O.M.P 3/2015, decided on 28.02.2017], the question regarding compliance with Sec. 21 was raised in a case where the statement of claim was filed before an arbitrator without any formal invocation of arbitration. In these circumstances, the High Court, Delhi explained the purpose of Sec. 21 as follows:

"25. A plain reading of the above provision indicates that except where the parties have agreed to the contrary, the date of commencement of arbitration proceedings would be the date on which the recipient of the notice (the Petitioner herein) receives from the claimant a request for referring the dispute to arbitration. The object behind the provision is not difficult to discern. The party to the arbitration agreement against whom a claim is made should know what the claims are. It is possible that in response to the notice, the recipient of the notice may accept some of the claims either wholly or in part, and the disputes between the parties may thus get narrowed down. That is one aspect of the matter. The other is that such a notice provides an opportunity to the recipient of the notice to point out if some of the claims are time barred, or barred by any law or untenable in fact and/or that there are counter-claims and so on.

26. Thirdly, and importantly, where the parties have agreed on a procedure for the appointment of an arbitrator, unless there is such a notice invoking the arbitration clause, it will not be possible to know whether the procedure as envisaged in the arbitration clause has been followed. Invariably, arbitration clauses do not contemplate the unilateral appointment of an arbitrator by one of the parties. There has to be a consensus. The notice under Section 21 serves an important purpose of facilitating a consensus on the appointment of an arbitrator.

27. Fourthly, even assuming that the clause permits one of the parties to choose the arbitrator, even then it is necessary for the party making such appointment to let the other party know in advance the name of the person it proposes to appoint. It is quite possible that such person may be „disqualified" to act an arbitrator for various reasons. On receiving such notice, the recipient of the notice may be able to point out this defect and the claimant may be persuaded to appoint a qualified person. This will avoid needless wastage of time in arbitration proceedings being conducted by a person not qualified to do so. The second, third and fourth reasons outlined above are consistent with the requirements of natural justice which, in any event, govern arbitral proceedings.

28. Lastly, for the purposes of Section 11(6) of the Act, without the notice under Section 21 of the Act, a party seeking reference of disputes to arbitration will be unable to demonstrate that there was a failure by one party to adhere to the procedure and accede to the request for the appointment of an arbitrator. The trigger for the Court's jurisdiction under Section 11 of the Act is such failure by one party to respond.

29. Of course, as noticed earlier, parties may agree to waive the requirement of such notice under Section 21. However, in the absence of such express waiver, the provision must be given full effect to. The legislature should not be presumed to have inserted a provision that serves a limited purpose of only determining, for the purposes of limitation, when arbitration proceedings commenced. For a moment, even assuming that the provision serves only that purpose viz. fixing the date of commencement of arbitration proceedings for the purpose of Section 43(1) of the Act, how is such date of commencement to be fixed if the notice under Section 21 is not issued? The provision talks of the „Respondent" receiving a notice containing a request for the dispute "to be referred to arbitration". Those words have been carefully chosen. They indicate an event that is yet to happen viz. the reference of the disputes to arbitration. By overlooking this important step, and straightaway filing claims before an arbitrator appointed by it, a party would be violating the requirement of Section 21, thus frustrating an important element of the parties consenting to the appointment of an arbitrator."

36. For the aforesaid reason, the Court is of the view that the present arbitration proceedings, being held without a notice by the Respondent under Section 21 invoking the arbitration clause being received by the Petitioner, are invalid. The only exception to this would have been an agreement to the contrary between the parties. There is no such agreement by which the Petitioner could be said to have waived the requirement of notice under Section 21 of the Act. The impugned Award in the present case is therefore opposed to the fundamental policy of Indian law since the mandatory requirement of the Act has not been complied with. The ground under Section 34 (2) (b) (ii) of the Act is attracted. Therefore, the impugned Award is liable to be set aside on this ground as well. Notice under S.21 of Arbitration and Conciliation Act, 1996 is mandatory to initiate arbitral proceedings.

K. Phaniraj, ACM/M&D/SCR

Difference between Void and Illegal agreements

All illegal agreements are void, but not all void agreements are illegal.

Void Agreements: S 2 (g) of Indian Contract Act, 1872 defines that an agreement not enforceable by law is said to be void. Further Section 2(j) defines that a contract which ceases to be enforceable by law becomes void when it ceases to be enforceable. The Act expressly states that the following agreements are void:

Agreement with a minor, person of unsound mind and with person declared disqualified by law to enter into contract (S 11). An agreement where both parties are under the mistake of Fact (S 20). An agreement that contains illegal objects and illegal purpose (S 23). Agreements void, if considerations and objects unlawful in part (S 24). The agreement that restricts marriage (S 26). An agreement that restricts legal proceeding (S 27). The agreement that restricts trade (S 28). Agreements, the meaning of which is uncertain are void (S 29). A contract that includes illegal betting or gambling (S 30).

A void contract is considered invalid from its inception due to not fulfilling the requirements of a valid contract. **For example**, a contract where both parties are minors is void since minors don't have the legal capacity to enter in one.

What are illegal agreements?

The Statute has not specifically defined anywhere what is an illegal agreement. However, an illegal agreement is forbidden by law. Any agreement against the law, for doing any criminal activity, or against public policy etc. Illegal agreements are invalid from inception and all agreements associated with the original contract are also become void. Ex: For example, an illegal agreement is hiring someone for murder, trade of drugs or any object declared illegal by law and may invite punishment under the Indian Penal Code.

Thus, the differences are:

A void agreement is one that is not legally enforceable, while an illegal agreement is one, whose creation is prohibited by law. An agreement becomes void when it loses its enforceability by law. When an agreement becomes void, it can no longer be enforced by law and loses its legally binding nature. In a void agreement, neither party has any legal rights or obligations or any kind of legal status. A void agreement is not prohibited by Indian Penal Code (IPC), but IPC strictly prohibits an illegal agreement. Collateral agreements of a void agreement may or may not be void. Conversely, collateral agreements of an illegal agreement cannot be enforceable by law as they are void ab initio.

K. Gopinath, CLA, GM/O/SCR

FAQ What are the conditions preceding stay of an execution?

The proceedings by which decree-holder moves the court for satisfaction of decree is called execution proceedings by which the decree-holder recovers the products of the judgment. However, there are certain conditions preceding the court's order for the stay on execution of decree viz.:

Order-21 Rule-26 of CPC –When Court may stay execution- the Court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment-debtor to apply to the Court by which the decree was passed, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or Appellate Court if execution had been issued thereby, or if application for execution had been made thereto."

Order-21 Rule-29 states that "Stay of execution pending suit between decree-holder and judgment-debtor– where a suit is pending in any Court against the holder of a decree of such Court or of a decree which is being executed by such Court, on the part of the person against whom the decree was passed, the Court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided: provided that if the decree is one for payment of money, the Court shall, if it grants stay without security, record its reasons for so doing".

Order-41 Rule-5(1) provides "Stay by Appellate Court- An appeal shall not operate as a stay of proceedings under a decree/order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree.

Order-41 Rule-5(2) states "Stay by Court which passed the decree: Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the said Cour may on sufficient cause being shown order the execution to be stayed".

Order-41 Rule-5(3)- "No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the Court making it is satisfied- (a) that substantial loss may result to the party applying for stay of execution unless the order is made; (b) that the application has been made without unreasonable delay; and (c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him".

K. Gopinath, CLA, GM/O/SCR

Superior officers not responsible for contumacious act of subordinates

In a landmark judgment the Supreme Court has cleared the air by declaring that superior officers cannot be held liable for the contumacious act committed by their subordinates. The Apex Court was hearing a criminal appeal against the order of the Division Bench of the High Court of Guwahati which held the contemnors guilty of wilful disobedience of its order in WP (Civil) No. 5491/2001. The proceedings against the appellant No.1 were abated due to his death while the matter was pending before the Supreme Court.

Facts of the case are as follows: Section 21 of the Assam Agricultural Produce Market Act, 1972 empowered the Marketing Committees or the Assam State Agricultural Marketing Board to levy cess on the agricultural produce bought or sold in the notified market area, at the prescribed rate.

Writ petitions were filed by the respondent no.1-Association among others before the High Court on the premise that its members purchased the agricultural produce outside the State and thus, no cess is leviable. Rules were struck down leading to the introduction of the Amendment Act, 2000, amending Section 21 of the Act while inserting Section 21A. A challenge made by the Board to the decision of the Full Bench dated 04.04.2001 before the Supreme Court resulted in the order dated 08.12.2005, inter alia holding that in view of the subsequent developments, there was no need to go into the issues.

Section 21A was inserted by the amending Act, 2006 facilitating the Board to levy and collect cess for the marketing committees in the notified market areas in addition to their existing power. This amendment was put into challenge in the batch of writ petitions before the Division Bench of the High Court, which upheld the constitutional validity. It was further held that disputed questions including that of refund cannot be gone into in a writ petition invoking Article 226 of the Constitution of India, and such disputes can be dealt with by the committee constituted.

Contempt Case (Civil) No. 401/2008 was filed alleging that the direct evidence produced by the members of the respondent No. 1 were not looked into and scrutinized for the purpose of levying cess. Both the parties incidentally filed SLPs. The High Court hauled all the appellants for committing wilful disobedience. Against the said order SLP was filed by the Board.

The Apex Court, while allowing the appeals filed by appellant Nos. 2 to 4 observed: "8. We are dealing with a civil contempt. The Contempt of Courts Act, 1971 explains a civil contempt to mean a willful disobedience of a decision of the Court. Therefore, what is relevant is the "willful" disobedience. Knowledge acquires substantial importance qua a contempt order. Merely because a subordinate official acted in disregard of an order passed by the Court, a liability cannot be fastened on a higher official in the absence of knowledge. When two views are possible, the element of willfulness vanishes as it involves a mental element. It is a deliberate, conscious and intentional act. What is required is a proof beyond reasonable doubt since the proceedings are quasi-criminal in nature.

..... It is well open to the said party to contend that the benefit of the order passed has not been actually given, through separate proceedings while seeking appropriate relief but certainly not by way of a contempt proceeding. While dealing with a contempt petition, the Court is not expected to conduct a roving inquiry and go beyond the very judgment which was allegedly violated. The said principle has to be applied with more vigor when disputed questions of facts are involved and they were raised earlier but consciously not dealt with by creating a specific forum to decide the original proceedings.

10. ……. Vicarious liability as a principle cannot be applied to a case of contempt. The question as to whether the drivers of two members of the respondent no.1 showed the order passed by the court and the documents produced are true and genuine being in the realm of adjudication, ought not to have been taken up by the High Court while exercising contempt jurisdiction. We may note that it is the respondent no.1 who not being satisfied with the order passed by the High Court, filed the special leave petition. Even in the communications sent apart from the Press Note, it is nowhere stated that the order passed by the court could be violated. We find that the subsequent developments also shall enure to the benefit of the appellants. In cases where cess was levied, individual members of the respondent no.1 could have made their challenge before the committee. In our considered view, the entire exercise of the High Court is not warranted and the aggrieved members of the respondent no.1 could have been well advised to seek the alternative remedy open to them including redressal through the committee."
[Dr.U.N.Bora&Ors. v. Assam Roller Flour Mills Association &Anr. Criminal Appeal No. 1967/2009. DOJ- 26.10.2021]

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

YOURS LEGALLY

Public Officers should not be called to court unnecessarily

Time and again the Apex Court has reiterated that public officers should not be called to court unnecessarily.

On 09.03.2011, the Supreme Court had held in CA No. 5600/2006 [R.S.Singh v U.P.Malaria Nirikshak Sangh & Ors.] observed: "….we are coming across many orders where High Court Judges are summoning executive officials routinely, casually, and sometimes even at the drop of a hat. This is most improper. We are constrained to make these observations because we are repeatedly coming across a large number of cases where such orders summoning high officials are being passed by the High Courts and often it is only for the ego satisfaction of the learned Judge… Flaunting these powers unnecessarily only brings the judiciary into disrepute…In our opinion, if the High Court finds that its order has not been complied with, it shall first see whether the order can be complied with without summoning any official and for that purpose it can ask the Advocate General, Additional Advocate General or Chief Standing Counsel or some other counsel of the State to communicate to the concerned official that there is some order of the Court which has not been complied with. Ordinarily, this will suffice because we see no reason as to why the executive authorities will not comply with the orders of the court. It is only in some extreme case where the High Court is convinced that deliberately the order of the court has been ignored in a spirit of defiance that it may summon the official to explain why the order of the court has not been complied with. The system functions on mutual respect between the judiciary and the executive. While the judiciary must respect the executive, at the same time, the executive must also respect the judiciary. If we do not respect each other, the system will collapse. In the present case, we are of the opinion that the High Court was not justified in summoning the aforementioned officials." Later in N.K.Janu v. Lakshmi Chandra [CA No.3740/2019,DOJ–10.04.2019. 2019 (6) SCALE 236] the Supreme Court held: "22…we find that the High Court was not justified in passing orders from time to time to secure presence of the officers. The officers of the State discharge public functions and duties. The orders are generally presumed to be passed in good faith unless proved otherwise. The officers pass orders as a custodian of public money. Therefore, merely because an order has been passed, it does not warrant their personal presence. The summoning of officers to the court to attend proceedings, impinges upon the functioning of the officers and eventually it is the public at large who suffer on account of their absence from the duties assigned to them. The practice of summoning officers to court is not proper and does not serve the purpose of administration of justice in view of the separation of powers of the Executive and the Judiciary. If an order is not legal, the Courts have ample jurisdiction to set aside such order and to issue such directions as may be warranted in the facts of the case."

Thereafter, in State of U.P & Ors. v. Sudarshana Chatterjee [CA Nos. 9300 & 9301/2019. DOJ – 10.12.2019] the Apex Court held: "19. The High Court, in our view, was not right in directing the Principal Secretary to appear in the court and explain the reason for passing the order dated 04.01.2019. Observing that merely because an order has been passed by the officer, it does not warrant the personal presence of the officer in the Court and summoning of officers to the Court and eventually affect the public at large". Reliance was also placed by the Apex Court on its earlier order in N.K.Janu case cited ut supra. The latest order of the Apex Court dated 09.07.2021 came in the case State of U.P & Ors. v. Dr. Manoj Kumar Sharma [CA No. 2320/2021] wherein it was held:

"17. A practice has developed in certain High Courts to call officers at the drop of a hat and to exert direct or indirect pressure. The line of separation of powers between Judiciary and Executive is sought to be crossed by summoning the officers and in a way pressurizing them to pass an order as per the whims and fancies of the Court.

18…It is always open to the High Court to set aside the decision which does not meet the test of judicial review but summoning of officers frequently is not appreciable at all. The same is liable to be condemned in the strongest words…….

20. Thus, we feel, it is time to reiterate that public officers should not be called to court unnecessarily. The dignity and majesty of the Court is not enhanced when an officer is called to court. Respect to the court has to be commanded and not demanded and the same is not enhanced by calling public officers. The presence of public officer comes at the cost of other official engagement demanding their attention. Sometimes, the officers even have to travel long distance. Therefore, summoning of the officer is against the public interest as many important tasks entrusted to him gets delayed, creating extra burden on the officer or delaying the decisions awaiting his opinion. The Court proceedings also take time, as there is no mechanism of fixed time hearing in Courts as of now. The Courts have the power of pen which is more effective than the presence of an officer in Court. If any particular issue arises for consideration before the Court and the Advocate representing the State is not able to answer, it is advised to write such doubt in the order and give time to the State or its officers to respond."

M.K. Shaji, CLA/RWF

TREATISE ON **A&C Act, 1996**

(Conti …...from previous issue)

Section 27:Court assistance in taking evidence –

Section 27(5) deals with the effect of not adhering to the directions of the Arbitral Tribunal. Section 27(5) states that Persons (i) failing to attend in accordance with such process, or (ii) making any other default, or (iii) refusing to give their evidence, or (iv)guilty of any contempt to the arbitral tribunal during the conduct of arbitral proceedings; shall be subject to the like disadvantages, penalties and punishments by order of the Court on the representation of the arbitral tribunal as they would incur for the like offences in suits tried before the Court.

Section 27(6) states that the expression "Processes" includes summonses and commissions for the examination of witnesses and summonses to produce documents.

One of the vexed problem that persists the Arbitral tribunals is to implement their interim orders as thay lack the power of a Court. Therefore Section 17 was enacted in 2015 for the purpose of providing a "complete solution" to the problem. Said amendment gave teeth to the orders of the Arbitral Tribunal and the same would be statutorily enforceable in the same manner as the Orders of a Court. This is manifest in insertion of Section 17(2) which states that "….. any order issued by the arbitral tribunal under this section shall be deemed to be an order of the Court for all purposes and shall be enforceable under the Code of Civil Procedure, 1908, in the same manner as if it were an order of the Court".

Arbitrtal Tribunals empowered to process contempt of court for breach of its orders:

The Supreme Court in Alka Chandewar vs Shamshul Ishrar Khan on 6 July, 2017 had an occation to interpret Section 27(5). In this case, the sole Arbitrator passed an interim order under Section 17 of the A&C Act, 1996 in which it was mentioned that no further flats were to be disposed of without the leave of the Arbitral Tribunal. In breach of this order, it is alleged that the respondent in fact transferred five such flats. By the order, it was held by the Arbitrator that its interim order had, in fact, been breached by the respondent which amounts to be contempt of its orders. Ultimately, by an order the Arbitrator referred the aforesaid contempt of the order to the High Court to pass necessary orders thereon under Section 27(5) of the Act. High Court at Bombay held that Section 27(5) of the Arbitration and Conciliation Act, 1996 does not empower the Tribunal to make representation to the Court for contempt if the orders including the interim orders passed by the Arbitrator except in respect of taking evidence are violated by the party.

Interpreting powers of the Arbitral Tribunals under Section 27, the Supreme Court held that **"**If Section 27(5) is read literally, there is no difficulty in accepting the plea of learned senior advocate for the appellant, because persons failing to attend in accordance with the court process fall under a separate category from "any other default". Further, the Section is not confined to a person being guilty of contempt only when failing to attend in accordance with such process. The Section specifically states that persons guilty of any contempt to the Arbitral Tribunal during the conduct of the Arbitral proceedings is within its ken. The aforesaid language is, in fact, in consonance with the Chapter heading of Chapter V, "Conduct of arbitral proceedings".

In the present case one must go by the plain meaning of sub-section (5). This being the case, it is difficult to appreciate the reasoning of the High Court. Also, in consonance with the modern rule of interpretation of statutes, the entire object of providing that a party may approach the Arbitral Tribunal instead of the Court for interim reliefs would be stultified if interim orders passed by such Tribunal are toothless. It is to give teeth to such orders that an express provision is made in Section 27(5) of the Act.

Referring to the judgement of the Delhi High Court in Sri Krishan v. Anand, (2009) 3 Arb LR 447 (Del) (followed in Indiabulls Financial Services v. Jubilee Plots, OMP Nos.452-453/2009 Order dated 18.08.2009) the Supreme Court observed that "any person failing to comply with the order of the arbitral tribunal under section 17 would be deemed to be "making any other default" or "guilty" of any contempt to the arbitral tribunal during the conduct of the proceedings" under section 27(5) of Act. The remedy of the aggrieved party would then be to apply to the arbitral tribunal for making a representation to the Court to mete out appropriate punishment. Once such a representation is received by the Court from the arbitral tribunal, the Court would be competent to deal with such party in default as if it is in contempt of an order of the Court, i.e., either under the provisions of the Contempt of Courts Act or under the provisions of Order 39 Rule 2A Code of Civil Procedure, 1908.

N. Murali Krishna, Sr.Law Officer