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# Lex Info

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#### *Legal Maxim*

Actus reus (means guilty act). The actual crime that is committed, rather than the intent or thought process leading up to the crime. Thus, the external elements of a crime, as contrasted with mens rea, the internal elements.

**ABC OF ACTS****The Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013**

Contd... from last issue.

**Section 38: Power to take possession of land to be acquired.**—(1) The Collector shall take possession of land after ensuring that full payment of compensation as well as rehabilitation and resettlement entitlements are paid or tendered to the entitled persons within a period of three months for the compensation and a period of six months for the monetary part of rehabilitation and resettlement entitlements listed in the Second Schedule commencing from the date of the award made under section 30: Provided that the components of the Rehabilitation and Resettlement Package in the Second and Third Schedules that relate to infrastructural entitlements shall be provided within a period of eighteen months from the date of the award: Provided further that in case of acquisition of land for irrigation or hydel project, being a public purpose, the rehabilitation and resettlement shall be completed six months prior to submergence of the lands acquired. (2) The Collector shall be responsible for ensuring that the rehabilitation and resettlement process is completed in all its aspects before displacing the affected families.

**Section 39: Additional compensation in case of multiple displacements.**—The Collector shall, as far as possible, not displace any family which has already been displaced by the appropriate Government for the purpose of acquisition under the provisions of this Act, and if so displaced, shall pay an additional compensation equivalent to that of the compensation determined under this Act for the second or successive displacements.

**Section 40: Special powers in case of urgency to acquire land in certain cases.**—(1) In cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of thirty days from the publication of the notice mentioned in section 21, take possession of any land needed for a public purpose and such land shall thereupon vest absolutely in the Government, free from all encumbrances. (2) The powers of the appropriate Government under sub-section (1) shall be restricted to the minimum area required for the defence of India or national security or for any emergencies arising out of natural calamities or any other emergency with the approval of Parliament: Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours notice of his intention to do so, or such longer

notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience. (3) Before taking possession of any land under sub-section (1) or sub-section (2), the Collector shall tender payment of eighty per cent. of the compensation for such land as estimated by him to the person interested entitled thereto. (4) In the case of any land to which, in the opinion of the appropriate Government, the provisions of sub-section (1), sub-section (2) or sub-section (3) are applicable, the appropriate Government may direct that any or all of the provisions of Chapter II to Chapter VI shall not apply, and, if it does so direct, a declaration may be made under section 19 in respect of the land at any time after the date of the publication of the preliminary notification under sub-section (1) of section 11. (5) An additional compensation of seventy-five per cent. of the total compensation as determined under section 27, shall be paid by the Collector in respect of land and property for acquisition of which proceedings have been initiated under sub-section (1) of this section: Provided that no additional compensation will be required to be paid in case the project is one that affects the sovereignty and integrity of India, the security and strategic interests of the State or relations with foreign States.

**Section 41: Special provisions for Scheduled Castes and Scheduled Tribes.**—(1) As far as possible, no acquisition of land shall be made in the Scheduled Areas. (2) Where such acquisition does take place it shall be done only as a demonstrable last resort. (3) In case of acquisition or alienation of any land in the Scheduled Areas, the prior consent of the concerned Gram Sabha or the Panchayats or the autonomous District Councils, at the appropriate level in Scheduled Areas under the Fifth Schedule to the Constitution, as the case may be, shall be obtained, in all cases of land acquisition in such areas, including acquisition in case of urgency, before issue of a notification under this Act, or any other Central Act or a State Act for the time being in force: Provided that the consent of the Panchayats or the Autonomous Districts Councils shall be obtained in cases where the Gram Sabha does not exist or has not been constituted. (4) In case of a project involving land acquisition on behalf of a Requiring Body which involves involuntary displacement of the Scheduled Castes or the Scheduled Tribes families, a Development Plan shall be prepared, in such form as may be prescribed, laying down the details of procedure for settling land rights due, but not settled and restoring titles of the Scheduled Tribes as well as the Scheduled Castes on the alienated land by undertaking a special drive together with land acquisition.

(to be contd...)

V. Appa Rao, CLA,GM Office

**RTI Series**

Contd.. from last issue

**Finality of orders of Information Commission:-**

S 19 (7) declares that the decision of the CIC or SIC shall be binding. This means that in normal hierarchy, the CIC or SIC is the apex redressal authority. Now the question is how to agitate, if one is not satisfied with the order of the CIC or SIC. The finality assigned in S 19 (7) does not snatch the writ jurisdiction of the High Courts. In other words, if any information seeker is aggrieved by the order of the CIC or SIC, he may approach the concerned High Court for redressal. Needless to tell that the matter may thereafter be carried to the Supreme Court if the order of the High Court is not acceptable to a person.

**A contradiction in the Act:-** S 9 (7) states that the decision of the CIC or SIC shall be binding. However, S 9 (9) warrants the CIC or SIC to include the right to appeal to the “complainant” and the public authority. The word in this Sub-Section should have been ‘appellant’, but not ‘complainant’, since it is the S 18 which deals with the complaints, but not by S 19. Moreover, when the decision of the CIC or SIC is binding, there need not be any mention in its order to include the right to appeal. The right to approach the High Court, duly invoking the writ jurisdiction, cannot be equated with an appeal remedy.

**Judicial Review of CIC/SIC’s orders:-** Mr. Shailesh Gandhi, ex Central Information Commissioner and Ms. Rhythm Buria analysed the power of the High Courts to grant stay on the orders of the Information Commission’s order [“The Leaflet”, 26.01.2021]. S 23 bars jurisdiction of Courts to entertain any suit, application or other proceeding in respect of any order made under the RTI Act and no such order shall be called in question otherwise than by way of an Appeal under the RTI Act. S 19 (7) makes the decision of the SIC/CIC binding. Mr Shailesh Gandhi observed that the High Courts were quick to grant stay to the order of SIC or CIC, lest the order of the SIC or CIC would get implemented, thereby rendering the case before the High Court infructuous.

It was further opined by Shri Gandhi that there can be no quarrel that S 23 of the RTI Act does not bar the jurisdiction of the High Courts under Article 226. However, judicial review under Art. 226 is directed against the decision-making *process*, and not the decision itself. Therefore, there arises a question of exercising discretion. It is settled law that the writ of certiorari is a discretionary writ. In *TC Basappa v. T Nagappa* the Supreme Court identified two essential features of the writ of certiorari:

“To be ordered only to adjudicate acts of judicial and quasi-judicial authorities.

High Court’s control exercised over judicial and quasi-judicial authorities is supervisory, and not appellate. In other words, a writ of certiorari can be issued only if it is “without jurisdiction or palpably erroneous”.

Supreme Court had also advised to grant short notices in cases where stay is granted by the High Courts. Quick disposal of cases is also required to speed up RTI matters.

**Returning of appeal:-** Rule 9 states that an appeal may be returned to the appellant, if it is not accompanied by the documents as specified in rule 8, for removing the deficiencies and filing the appeal complete in all respects.

**Processing of appeal:-** Rule 10 of RTI Rules 2012 lays down the method of processing of a 2<sup>nd</sup> appeal received by it. Rule 10 states:

On receipt of an appeal, if the Commission is not satisfied that it is a fit case to proceed with, it may, after giving an opportunity of being heard to the appellant and after recording its reasons, dismiss the appeal:

Provided that no appeal shall be dismissed only on the ground that it has not been made in the specified format if it is accompanied by documents as specified in rule 8.

(2) The Commission shall not consider an appeal unless it is satisfied that the appellant has availed of all the remedies available to him under the Act.

(3) For the purposes of sub-rule (2), a person shall be deemed to have availed of all the remedies available to him under the Act:

(a) if he had filed an appeal before the First Appellate Authority and the First Appellate Authority or any other person competent to pass order on such appeal had made a final order on the appeal; or

(b) where no final order has been made by the First Appellate Authority with regard to the appeal preferred, and a period of forty five days from the date on which such appeal was preferred has elapsed.

In the light of this Rule it is clear that exhausting the channel laid down in the RTI Act 2005 is essential before approaching the SIC or CIC.

**Procedure for deciding appeals:-** Rule 11 of the RTI Rules, 2012 speaks about the various ancillary issues and the procedure to be adopted for deciding the appeals. Rule 12 states:

(1) The appellant shall be informed of the date at least seven clear days before the date of hearing.

(2) The appellant may be present in person or through his duly authorised representative or through video conferencing, if the facility of video conferencing is available, at the time of hearing of the appeal by the Commission.

(3) Where the Commission is satisfied that the circumstances exist due to which the appellant is unable to attend the hearing, then, the Commission may afford the appellant another opportunity of being heard before a final decision is taken or take any other appropriate action as it may deem fit.

M.K. Shajl, CLA/RWF

### **Legal recognition of electronic records under Information Technology Act, 2000**

The Information Technology Act, 2000 ("IT Act") provides for recognition of electronic records under Section 4, which illustrates that any document which is required by law to be in writing, typewritten or in printed form, will be considered to be valid if it is rendered or made available in electronic form and accessible for a subsequent reference in future.

As per Section 10A of the IT Act, in case of a contract formation, where the communication of proposals and acceptance are expressed in electronic form or by means of an electronic record, such contract shall not be deemed to be unenforceable solely on the ground that such electronic form or means was used for that purpose. The aforesaid provision was introduced by the Information Technology (Amendment Act), 2008 taking into account the growing reliance on electronic means for executing commercial agreements/documents.

Further, as regards signing of the contracts, electronic signatures are treated as equivalent to traditional wet signatures and are also legally recognised under Section 5 of the IT Act.

It may be noted that the first schedule of the IT Act, specifically excludes the following documents and transactions from the application of the IT –

- i. Negotiable instruments other than a cheque as defined in section 13 of the Negotiable Instruments Act, 1881;
- ii. Power of attorney as defined in section 1A of the Powers-of-Attorney Act, 1882;
- iii. A trust as defined in section 3 of the Indian Trust Act, 1882;
- iv. A Will as defined in clause (h) of section 2 of the Indian Succession Act, 1925 including any other testamentary disposition by whatever name called; and
- v. Any contracts for sale or transfer of immovable property or any interest in such property.

### **Evidentiary value of e-signature under Indian Evidence Act, 1872**

The Indian Evidence Act, 1872 was also amended to bring it in consonance with the electronic methods of execution of documents introduced by the IT Act. Section 65A of the Indian Evidence Act, 1872, recognizes

admissibility of electronic records as evidence. It states that the contents of electronic records may be proved in accordance with the provisions of Section 65B of the said Act.

Section 65B of the Indian Evidence Act, 1872 provides for acceptance of electronic evidence and further states that any information stored in an electronic mode that can be printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document and such documents shall be admissible in any proceedings, without further proof or production of the original, as evidence or any contents of the original or of any fact.

In addition to the above, section 65B(4) states that a certificate needs to be presented that recognizes the electronic record having the statement and explicates the way in which it is to be presented.

Section 73A of the Evidence Act, 1872 provides that in order to ascertain whether a digital signature is that of the person by whom it purports to have been fixed, the Court may direct that person or the Controller or the Certifying Authority or any other person to apply the public key listed in the Digital Signature Certificate and verify the digital signature purported to have been affixed by that person.

Furthermore, Section 47A of the Evidence Act, 1872 provides that where the Court is required to give its opinion on the electronic signature of any individual, the opinion of the certifying authority which has issued the electronic signature certificate is a relevant fact. Section 85B of the Evidence Act, 1872 provides that, unless it is proved otherwise, the court shall presume that -

- The secure electronic record has not been altered since the specific point of time to which the secure status relates;

- The secure digital signature is affixed by subscriber with the intention of signing or approving the electronic record.

Section 85C of the Indian Evidence Act, 1872 provides that if a digital signature is affixed to a particular document, then the court shall presume that such document is true and correct.

D.R.V.S.S.N.Raju, CLA/G/BZA

**Difference between****Plaint and  
Written Statement****FAQ****What is meant by a Stay Order?**

The suit is initiated under Section 26 of CPC by filing a Plaint which is defended by filing a Written Statement. The Defendant denies the averments made by the Plaintiff through Written Statement.

**Plaint:** A Plaint is a legal document that is filed by the Plaintiff before the court of competent jurisdiction explaining the material facts of the matter from the plaintiff's perspective and seeking for an appropriate legal remedy. A Plaint is only to be filed in a civil suit and its filing marks the initiation of a civil suit against the defendant as has been expressly stated in Section 26 of CPC. The Plaint is governed and guided by the provisions envisaged under the Order 7 of the CPC.

The courts have the power to reject a Plaint which has been envisaged in Order 7 Rule 11 of CPC, 1908. There are two modes for causing rejection of a Plaint viz. the defendant may submit an interlocutory application for rejection of Plaint at any stage of the procedure and the Court may suo moto reject a Plaint in case of non-compliance with the provisions established by the CPC, 1908.

**Written Statement:** A Written Statement constitutes a reply filed by the defendant against the Plaint filed by the Plaintiff. The defendant seeks to specifically deny the averments made by the Plaintiff by stating the material facts in her perspective, stating a new fact or by stating legal objections against the allegations made by the Plaintiff. A defendant or an agent of the defendant who has been duly authorized is eligible to file a Written Statement. Where the Plaint is filed against two or defendants, a common Written Statement may be filed if it is signed by all the defendants. A Written Statement is to be filed within the period of 30 days which can be further extended to 90 days. The procedural intricacies of Written Statement are dealt with under Order 8 of CPC, 1908.

The Written Statement provides an opportunity to the Defendant to deny the allegations made by the Plaintiff before the Court. In case Written Statement is not presented before the Court, the Court may decide the matter being heard based solely upon the facts and allegations contained in the Plaint. However, an exception is made with regard to a Defendant with a disability, provided that it can be proved to the Court otherwise the Court may pass an order that it deems fit without considering the Written Statement.

Both these documents comprise the principles of *audi alteram partem* by providing sufficient opportunity to both the Plaintiff as well as Respondent to present the matter before the Court from their respective perspectives.

K. Gopinath, CLA, GM Office

Under the provisions of Order 21, Rule 26; Order 41, Rule 5 the CPC, 1908, Stay order is the act of temporarily stopping or suspending a judicial proceeding by order of a court. A judge may grant a stay on the actions of one party to the case when it is necessary to secure the rights of the other. A stay order means that the action which has been stayed would not be operative from the date of the passing of the order, but it does not mean that it will be wiped out of existence. When a stay order is passed the status of things at the issuance of the order remains the same until the order is valid or decided by a judge. Every court has been given the inherent power to temporarily suspend the proceedings in any case where the plaintiff is in default or has disobeyed any lawful order of the court. Proceedings can stay absolutely or conditionally.

There are two major types of stay orders viz. 1) a stay of execution and 2) a stay of proceedings. A stay of execution postpones the execution of the judgment, i.e., its enforcement against the party who has lost a case whereas the stay of proceedings halts the further legal process in a trial or any other legal proceeding.

The basic purpose of a stay order is to prevent injustice from any of the parties involved in a case. After the passing of a stay order, the party against whom such order is passed can state reasonable grounds to get it cancelled. Stay order can also mean any number of legal measures taken by a legislature to provide temporary relief to debtors. Fixing a timeline for stay orders solves the problem of judicial delay because stay orders can worsen the issue of pending cases.

K. Gopinath, CLA, GM Office

**KNOW OUR CONSTITUTION**

Article 72. Power of President to grant pardons, etc, and to suspend, remit or commute sentences in certain cases

(1) The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence (a) in all cases where the punishment or sentence is by a court Martial; (b) in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends; (c) in all cases where the sentence is a sentence of death (2) Nothing in sub clause (a) of Clause ( 1 ) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor of a State under any law for the time being in force.

**Whether increments granted to an employee while in service, can be recovered almost 10 years after his retirement on the ground that the said increments were granted on account of an error?**

The brief facts of the case— In the year 1966, the appellant joined services as a High School Assistant/Teacher at Craven High School, Kollam which is an aided school. During his tenure, he availed leave without allowance starting from 20.10.1972 to 31.03.1973 & again from 02.07.1973 to 28.03.1974, for pursuing post-graduation i.e., M.Sc. Course. Thereafter on 1.06.1989, the appellant was promoted as Headmaster of the school and he was granted senior grade promotion and his pay scale was revised accordingly. In the year 1997, a notice dated 09.10.1997 accompanied with an audit report of the Respondent No.5 was served on the appellant by the Respondent No.4 with an objection that the period of leave obtained by the appellant for undergoing higher education should not be included while determining his total qualifying service. Therefore, the pay and subsequent increments granted to the appellant should be recovered from him.

Meanwhile, the appellant had retired from service on 31.03.1999 and since then he was neither paid pensionary benefits nor death-cum-retirement gratuity (D.C.R.G.). The appellant challenged the proposal to initiate recovery proceedings against him by way of filing a complaint before the Public Redressal Complaint Cell, Chief Minister of Kerala, for recovering the increments granted to the appellant during the year 1989 & 1991. The respondent State of Kerala rejected the complaint by order dated 26.06.2000 stating that post-graduation degree-M.Sc. was not useful as per the Rule 91A Part I of the Kerala Service Rules in any manner to the public service, therefore, leave without allowance cannot be counted for service benefits.

Being aggrieved, the appellant filed a writ petition before the High Court. During the pendency of the writ petition, the amount of D.C.R.G. was released to the appellant. However, the respondent State of Kerala in their counter affidavit took a stand that the period during which the appellant was on leave without allowance for undertaking post-graduation cannot be counted for the purpose of grant of increments and, therefore, the demand for recovery made by them was justified. The Single Judge vide order dated 05.01.2006 upheld the reasoning given by the State of Kerala and dismissed the writ petition holding that the mistake committed by the department concerned while granting the service benefits can be rectified subse-

quently by way of proposed recovery to be effected from appellant's D.C.R.G. amount. There against, the appellant filed a writ appeal before the High Court. The Division Bench of the High Court vide impugned order dated 02.03.2009 dismissed the appeal, affirming the order of the learned Single Judge. The Appellants preferred appeal before the Supreme Court.

Learned counsel for the appellant would contend that the excess payment made to the appellant was not on account of any misrepresentation or fraud on his part. The excess payment was made due to a mistake in interpreting the Kerala Service Rules. He prays for setting aside the impugned judgment and also the order dated 26.06.2000 passed by the Public Redressal Complaint Cell, Chief Minister of Kerala.

This Court in a catena of decisions has consistently held that if the excess amount was not paid on account of any misrepresentation or fraud of the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order which is subsequently found to be erroneous, such excess payment of emoluments or allowances are not recoverable. This relief against the recovery is granted not because of any right of the employees but in equity, exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery is ordered.

It is not contended before the court that on account of the misrepresentation or fraud played by the appellant, the excess amounts have been paid. The appellant has retired on 31.03.1999. In fact, the case of the respondents is that excess payment was made due to a mistake in interpreting Kerala Service Rules which was subsequently pointed out by the Accountant General. This Court is of the view that an attempt to recover the said increments after passage of ten years of his retirement is unjustified.

The appeal succeeds and is accordingly allowed. The Judgment and order of the Division Bench dated 02.03.2009 and also of the Single Judge of the High Court dated 05.01.2006, and the order dated 26.06.2000 passed by the Public Redressal Complaint Cell of the Chief Minister of Kerala and the recovery Notice dated 09.10.1997 are set aside. (Thomas Daniel Vs state Of Kerala & Ors) (DOJ: 02.05.2022) (C.A.No. 7115/2010)

M.N. Vijitha, CLA/GAZ, CPO/O/SCR

**YOURS LEGALLY****Application under S.9 of A&C Act for interim protection in a Commercial Dispute shall be filed before Commercial Court only**

The appellant has developed a portion of certain land towards eco-tourism and party area named “Durgam Cheruvu Eco Tourism Deck and Party Area”. The Appellant and Respondent had entered into Lease agreement for operating and maintaining of the said project for a period of ten years. Differences cropped up as to payment of lease amount resulted in respondents taking recourse to the lease agreement, that envisages resolution of disputes through means of arbitration.

Pending commencement of the arbitral proceedings before the Tribunal, Respondents filed A.O.P before City Civil Court, Hyderabad under Section 9 of Arbitration and Conciliation Act, 1996 for grant of interim protection till arbitral proceedings commenced. The Court below, allowed the application and granted interim injunction as prayed by the respondents on the condition that respondents should deposit monthly rents from October, 2021 till December, 2021 within two months and to ensure that lease deed is registered before 31.1.2022. Aggrieved, present Appeal is preferred.

The primary submission is on the issue of maintainability of said A.O.P before City Civil Court, Hyderabad. According to them, inter-se dispute is a commercial dispute and all matters arising out of commercial transactions should be filed before the Commercial Court only and the ordinary Civil Court has no jurisdiction. As the issue of application of Commercial Courts Act, 2015 and jurisdiction of the Civil Court to entertain the A.O.P under Section 9 of the Act, 1996 on the ground that it is a commercial dispute goes to the root of the matter, issue is taken up as a preliminary issue.

Section 2 (1) (c) of the Commercial Courts Act, 2015 defines ‘commercial dispute’ and instances are mentioned in various clauses incorporated therein. For this case, Clause (vii) is relevant – which reads as ‘agreements relating to immovable property used exclusively in trade or commerce’.

In so far as this case is concerned, ‘commercial dispute’ means a dispute arising out of agreements relating to immovable property used exclusively in trade or commerce [Section 2 (1) (c) (vii)]. Thus, a dispute arising out of agreement relating to a property is a commercial dispute, if

such immovable property is used exclusively for trade or commerce.

According to Section 10 (3) of Commercial Courts Act, 2015, if subject matter of an arbitration is a ‘commercial dispute’ of a ‘specified value’, all applications or appeals arising out of arbitration clause of contract filed under the provisions of the Arbitration and Conciliation Act, 1996 would ordinarily lie before any principal civil Court of original jurisdiction in a district and heard and disposed of by the Commercial Court exercising territorial jurisdiction over such arbitration where such Commercial Court has been constituted. Section 12 prescribes mechanism to determine what is ‘specified value’.

On a cumulative reading of Section 2 (1) (C) (vii), Section 10 and Section 12, it is apparent that if a dispute arising out of an agreement concerning immovable property which is exclusively used in trade or commerce and *whose ‘specified value’ is more than one crore, then, it is a ‘commercial dispute’ and only the commercial Court has jurisdiction to deal with application filed under Section 9 of the Act, 1996.*

*The terms of lease agreement clearly indicate that the suit schedule land was already put to use for commercial purposes by earlier lessee. Therefore, Section 2 (1) (C) (vii) is attracted and dispute inter se between the appellant and the respondents is a commercial dispute. It is also seen that the suit schedule land was already ‘put to use’/ ‘used’ for commercial purpose and therefore the definition of ‘commercial dispute’ as incorporated in Section 2 (1) (C) (vii) is attracted in the instant case. Thus, there is no iota of doubt that the schedule property is a commercial property.*

*It is not in dispute that arrears of rent was more than two crore. Therefore, the ‘specified value’ of the subject dispute is more than one crore and in view of specific provision in Section 10 read with Section 12 of the Act, 2015, application under Section 9 of the Arbitration and Conciliation Act, 1996 has to be filed in a designated Commercial Court only and Civil Court has no jurisdiction to deal with such applications. Therefore, the order under challenge is not sustainable and is accordingly set aside.*

*[Telangana State Tourism Development Corporation Limited Vs. M/s. A.A. Avocations Pvt. Ltd., CMA No.163 OF 2022 DOJ: 09.06.2022, High Court of Telangana]*

S. Sreenivasu, CLA/GNT

## TREATISE ON

### The Arbitration And Conciliation Act, 1996

#### Section 29 A – Time limit for arbitral award:

Section 29A was originally included in the Act on 23.10.2015 by an amendment. However, sub section 1 and sub section 4 have been further amended in 2019 w.e.f: 30.08.2019. Accordingly, Sub section 1 reads as follows:

29A(1) : The award in matters other than international commercial arbitration shall be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23. For quick reference, 23(4) is reproduced herewith: The statement of claim and defence under this section shall be completed within a period of six months from the date the arbitrator or all the arbitrators, as the case may be, received notice, in writing of their appointment.

The High Court of Delhi in *NCC Ltd. v. Union of India* [2018 SCC OnLine Del 12699] held at para 11 that:

“Section 29A of the Act is intended to sensitize the parties as also the Arbitral Tribunal to aim for culmination of the arbitration proceedings expeditiously. It is with this legislative intent, Section 29A was introduced in the Act by way of the Arbitration and Conciliation (Amendment) Act, 2015. This provision is not intended for a party to seek substitution of an Arbitrator only because the party has apprehension about the conduct of the arbitration proceedings by the said Arbitrator. The only ground for removal of the Arbitrator under Section 29A of the Act can be the failure of the Arbitrator to proceed expeditiously in the adjudication process.”

However, question as to whether Section 29A of the Act can be invoked to achieve other issues also in addition to extension of time, all the High Courts unequivocally held that same is intended to counter the delay in the conclusion of arbitration proceedings alone. The High Court of Gujarat in *Nilesh Ramanbhai Patel & Ors. v. Bhanubhai Ramanbhai Patel*, MANU/GJ/1549/2018 has pertinently observed that Section 29A of the Arbitration Act represents a complete code in itself.

In *FCA India Automobiles Pvt. Ltd. v. Torque Motor Cars Pvt. Ltd. & Anr*, 2018 SCC OnLine Bom 4371 while granting the extension prayed for, High Court of Bombay refused to examine the correctness of various orders passed by the arbitral tribunal relating to fixation of fees and rejection of the application for termination of mandate filed by the resisting party under Sections 12 and 13 of the Arbitration Act, by holding the same to be beyond the purview of examination under Section 29A.

Another important question is as to: which is Court competent to enlarge time for making of the award by the arbitral tribunal in terms of Section 29A (4). High Court of Delhi in *DDA Vs. M/s Tara Chand Sumit Construction Co.* [(OMP(MISC.) (COMM) 236/2019 decided on 12.05.2020)] held that the expression “Court” as used in Section 29A has to be read by taking resort to contextual meaning of the said term as provided in Section 2(1) of the Act, which begins with expression “in this part unless the context otherwise requires”. The High Court held that it is quite plausible to conclude that the power to extend the mandate of the arbitrator would lie with the principal civil court.

However, on a careful analysis, such an interpretation would lead to complication and would be in teeth of the powers of the “Court” under Section 11 of the Act. Referring to the judgments of Gujarat High Court in the matter of *Nilesh Ramanbhai Patel and Ors. v. Bhanubhai Ramanbhai Patel and Ors.* [Misc. Civil Application (O.J.) No. 1 of 2018 decided on 14.09.2018] and Bombay High Court in *Cabra Instalaciones Y Servicios, S.A. v. Maharashtra State Electricity Distribution Company* [2019 SCC Online Bom 1437], held that an application under Section 29A of the Act seeking extension of mandate of the arbitrator would lie only before the Court which has power to appoint the arbitrator under Section 11 of the Act and not with the Civil Court.

The High Court thus held that it would not be conducive for a civil court to entertain an application under Section 29A inasmuch as the said provision enables the court extending the time for substitute the arbitrator. Therefore, if the arbitrator had been appointed by the high court, the high court alone, and not the district court, will have competence to substitute the arbitrator so appointed while exercising powers under Section 29A. Thus, an application under Section 29A would lie only with the court which has power to appoint arbitrator.

N. Murali Krishna, Sr.Law Officer