



Lex Info

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

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Legal Maxim

Functus officio- It means 'of no further official authority or legal effect' or 'having performed his office' and is used in the context of an officer who is no longer in office or has fulfilled its purpose. It derives from 'fungere' that means to perform, expire or bring to a closure or end.

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

Contd... from last issue.

Section 48 - Establishment of National Monitoring Committee for rehabilitation and resettlement.

(1) The Central Government may, whenever necessary, for national or inter-State projects, constitute a National Monitoring Committee for reviewing and monitoring the implementation of rehabilitation and resettlement schemes or plans under this Act. (2) The Committee may, besides having representation of the concerned Ministries and Departments of the Central and State Governments, associate with it eminent experts from the relevant fields. (3) The procedures to be followed by the Committee and the allowances payable to the experts shall be such as may be prescribed. (4) The Central Government shall provide officers and other employees to the Committee necessary for its efficient functioning.

Section 49 - Reporting requirements.

The States and Union territories shall provide all the relevant information on the matters covered under this Act, to the National Monitoring Committee in a regular and timely manner, and also as and when required.

Section 50. Establishment of State Monitoring Committee for rehabilitation and resettlement.—

(1) The State Government shall constitute a State Monitoring Committee for reviewing and monitoring the implementation of rehabilitation and resettlement schemes or plans under this Act. (2) The Committee may, besides having representatives of the concerned Ministries and Departments of the State Government, associate with it eminent experts from the relevant fields. (3) The procedures to be followed by the Committee and the allowances payable to the experts shall be such as may be prescribed by the State. (4) The State Government shall provide such officers and other employees to the Committee as may be necessary for its efficient functioning.

Section 51. Establishment of Land Acquisition, Rehabilitation and Resettlement Authority.

(1) The appropriate Government shall, for the purpose of providing speedy disposal of disputes relating to land acquisition, compensation, rehabilitation and resettlement, establish, by notification, one or more Authorities to be known as —the Land Acquisition, Rehabilitation and Resettlement Authority to exercise jurisdiction, powers and authority conferred on it by or under this Act. (2) The appropriate

Government shall also specify in the notification referred to in sub-section (1) the areas within which the Authority may exercise jurisdiction for entertaining and deciding the references made to it under section 64 or applications made by the applicant under second proviso to 28 sub-section (1) of section 64.

Section 52 - Composition of Authority.

(1) The Authority shall consist of one person only (hereinafter referred to as the Presiding Officer) to be appointed, by notification, by the appropriate Government. (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may authorise the Presiding Officer of one Authority to discharge also the functions of the Presiding Officer of another Authority.

Section 53 - Qualifications for appointment as Presiding Officer.

(1) A person shall not be qualified for appointment as the Presiding Officer of an Authority unless,— (a) he is or has been a District Judge; or (b) he is a qualified legal practitioner for not less than seven years. (2) A Presiding Officer shall be appointed by the appropriate Government in consultation with the Chief Justice of a High Court in whose jurisdiction the Authority is proposed to be established.

Section 54 - Terms of office of Presiding Officer.

The Presiding Officer of an Authority shall hold office for a term of three years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier.

Section 55 - Staff of Authority.

(1) The appropriate Government shall provide the Authority with a Registrar and such other officers and employees as that Government may think fit. (2) The Registrar and other officers and employees of an Authority shall discharge their functions under the general superintendence of the Presiding Officer. (3) The salaries and allowances and other conditions of service of the Registrar and other officers and employees of an Authority shall be such as may be prescribed.

Section 56 - Salary and allowances and other terms and conditions of service of Presiding Officers.

The salary and allowances payable to and the other terms and conditions of service (including pension, gratuity and other retirement benefits) of the Presiding Officer of an Authority, shall be such as may be prescribed: Provided that neither the salary and allowances nor the other terms and conditions of service of the said Presiding Officers shall be varied to their disadvantage after appointment.

(to be contd...)

V. Appa Rao, CLA,GM Office

Contd.. from last issue

Section 22 of the RTI Act 2005 states: “Act to have overriding effect – The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, (19 of 1923), and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.” Though it appears prima facie, from Section 22, that the provisions of the RTI Act 2005, shall have effect over other laws, that is not the case actually. Courts have taken conflicting stands over the issue.

Earlier position: Information to be furnished under RTI Act, even when alternative avenue is available:-

Punjab & Haryana High Court in Civil Writ Petition No.12016 of 2016 [Shakti Singh Vs. State Information Commission, Haryana and others] held on 5.10.2018:

“(i) In case of any inconsistency between the provisions of RTI Act and other Act/law, the RTI Act shall prevail.

(ii) In case of an application preferred under the RTI Act where alternative procedure and conditions are prescribed under any other statute/law, the said application cannot be rejected and/or information denied on this ground. Such application shall be dealt with under the provisions of the RTI Act.”

Supreme Court's in its order dated 11.4.2019 in C.A No.5665/2014 [Institute of Companies Secretaries of India Vs. Paras Jain] held: “.....the existence of these two avenues is not mutually exclusive and it is up to the candidate to choose either of the routes.”

Present position: Information need not be furnished under RTI Act, when alternative avenue is available:-

In an RTI application certified copies of some information / documents regarding guidelines and rules pertaining to the scrutiny and classification of writ petitions and the procedure followed by the High Court, Karnataka in WP No. 26657/2004 and 17935/2006 was sought. The SPIO replied that the information sought for was available in the Karnataka High Court Act and the Rules. The SPIO further directed to seek the copy of the order sheets of the two writ petitions by filing appropriate application under the High Court Rules. Aggrieved, the applicant filed a complaint under Section 18 of the RTI Act before the Karnataka SIC, which allowed the complaint and directed the SPIO to supply the copy of the Karnataka High Court Act & Rules as well as certified copies of order sheets free of cost. The SPIO challenged the order of the SIC before the High Court, Karnataka (WP No.9418/2008) against the information seeker alone. While quashing the order passed by the SIC, it was observed by the High Court that the said Act and Rules are available in market and if not the applicant should obtain the same from the publishers and it was not open for the respondent to ask for copies of the same from the petitioner.

It was further observed that the order sheets are accessible to any person as per the procedure prescribed in the High Court Rules and the SIC should have adverted to the High Court Rules before proceeding further. Accordingly, the Writ Petition was allowed.

Though the SIC was not a party in the Writ Petition, the Karnataka Information Commissioner opted to challenge the order of the Single Bench through WA No. 3255/2010 before the High Court of Karnataka. The Division Bench of the High Court held that the appellant-Information Commissioner was not an aggrieved party and hence there was no question of granting leave of the High Court arose. Moreover, there was a delay of 335 days in filing the said appeal and the explanation seeking to condone the delay was not acceptable for the High Court. Hence, the Writ Appeal was dismissed.

Aggrieved, the Karnataka Information Commissioner approached the Apex Court. The Supreme Court held that when the information seeker did not opt to challenge the order of the Single Bench of the High Court, the Karnataka Information Commissioner had no legitimate cause to challenge the order of the High Court. A cost of Rs.1,00,000/- was imposed while dismissing the SLP.

The order of the State Information Commissioner, Karnataka to provide information which was available as annexures to a Civil Suit to which the RTI applicant was a party, was challenged before the Hon'ble High Court, Karnataka. The Hon'ble High Court, Karnataka held: “....if any information can be accessible through the mechanism provided under another statute, then the provisions of the RTI Act cannot be resorted to. In the case on hand, the information which is sought by the second respondent related to the legal notice which is issued by the second respondent through his advocate. This is available with the second respondent. In respect of other documents related to O.S.No.4132/2010 which was pending in the Civil Court, Bangalore, he can obtain the same by applying for the certified copies as per the provisions of Rule 230 of the Rules of Practice. Since the second respondent is party to the proceedings he can apply for the certified copies and obtain the same.....”.

The High Court, Karnataka placed reliance on the order of the High Court, Delhi in the Registrar, Supreme Court of India v. R.S.Misra [WP (C) No.3530/2011. DOJ – 21.11.2017] and its own order in SPIO v. N. Anabarasani [ILR 2009 Kar. 3890]. In the result, the impugned order was held to be unsustainable. [WP 26763/2013 & 26762/2013. SPIO & Dy. Registrar, Karnataka HC Vs. Karnataka Information Commissioner & Anr. DOJ – 09.01.2019].

The Supreme Court has again changed its stand and stated that the provisions of Gujarat High Court Rules are not inconsistent with the RTI Act provisions, and hence the overriding effect of RTI Act cannot be applied. In other words, one has to obtain information under the concerned High Court Rules, but not under the RTI Act 2005. [CA No. 1966-1967/2020. CIC v. High Court of Gujarat & Anr. DOJ – 04.03.2020]

The practice of summoning public officers to court is not proper , held by Hon'ble Supreme Court

The Hon'ble Supreme Court in an appeal against an Allahabad High Court decision in *Shri N.K. Janu, Deputy Director, ... vs Lakshmi Chandra* (Civil Appeal No.3740 of 2019 arising out of SLP(C) No.15358 of 2018) (DOJ : 10 April, 2019) observed that

“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”

The respondent had filed contempt petition alleging violation of a High Court order for regularisation of his service was not accepted by the Department, it was held that “once an order has been passed by the Department, it was open to the respondent to challenge the said order by way of a Writ Petition, but the Contempt Jurisdiction could not be invoked. It was held that the High Court “exceeded the Contempt Jurisdiction to compel the officers of the State to appear in court and in fact, the High Court travelled much beyond” the orders passed on 23.10.2008.

In the facts and circumstances of the case, the Hon'ble Supreme Court came to the finding that “the grievance regarding regularization of the service” “could not have been taken up in Contempt proceedings”, when such issue had “attained finality in the High Court.” Having said so, the Supreme Court came to the further finding that “the High Court was not justified in passing orders from time to time to secure presence of the officers” observing that “the officers of the State discharge public functions and duties” and “merely because an order has been passed, it does not warrant their personal presence.”

It was further observed that “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 admin-

istration 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.”

Accordingly, on facts, it was held that the entire proceedings in the Contempt Application were “wholly unjustified and in excess of jurisdiction vested with the Contempt Court.

M. Mohan Rao, CLA, GM Office

Whether Writ Petition is maintainable against an order referring parties to arbitration under *Section 8 of the A & C Act, 1996?

The Hon'ble High Court of Delhi held that a petition under Article 227 would not be maintainable against an order referring the parties to arbitration u/S 8. The court observed that there is no provision for appeal against an order allowing Sec 8 application in the Act, therefore, the legislative intent is clear in terms that if there is a valid arbitration agreement, the court must refer the parties to arbitration and all the issues related to existence and validity of the arbitration agreement must be raised before the tribunal.

The Hon'ble Court held that the entire case of the petitioner is based on the admission made by the respondent in respect of its alleged liability towards the petitioner. Nowhere has the petitioner disputed the existence of the arbitration clause. As observed by the Supreme Court in *Hindustan Petroleum Corporation Ltd. (227 (2016) DLT 285)* that once an arbitration clause exists in the agreement, it is obligatory for the court to refer the parties to arbitration in terms of the said agreement. In the present case, the petitioner has not denied the existence of the arbitration agreement. The only contention by the petitioner is that in light of the admission made by the respondent, there is no arbitrable dispute to be referred for arbitration. Hence, court held that there is no merit found in the petition and dismissed the case. [*Arun Srivastava vs M/s Larsen & Toubro Ltd. (Judgment dated 09.11.2021) in CM(M) 1520/2018*]

**S.8: Power to refer parties to arbitration where there is an arbitration agreement.(1) A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.*

K. Gopinath, LO/Genl. Admn.

Difference between**Legal Rights and Fundamental Rights****FAQ****Registration of FIR, when mandatory?****Legal Rights:**

These are freedoms granted to people by their governments. These are not universal, differing from state to state, country to country, individual to individual, and even from time to time. Judicial privileges are protected under the ordinary statute, but by amending the law, they may be changed or revoked by the legislature.

If violated, these rights will be dealt with by either of the ordinary courts that contradict the other two rights. In general, an ordinary right imposes a corresponding obligation on another person (and, in some circumstances, the state), but a constitutional right is a right that a citizen has against the state. Fundamental rights are protected by the executive, legislature, and judiciary from invasion. Our constitution provides that the Supreme Court has the power to enforce human rights. The remedy itself, thus, is a fundamental right. This differentiates it from other rights. In addition, these human rights are not universal rights, such as the right not to be subject to tax without the power of statute (Article 265), the right to land (Article 300A), and the freedom to exchange (Article 301). It is not possible to waive a constitutional right. A person may waive an ordinary legal right.

Fundamental Rights

Fundamental rights are those rights that are provided by some countries to their citizens to enjoy. These rights have a legal sanction. These rights can also be challenged in a court of law. Fundamental rights are equal to human rights but there is a small line of difference between both fundamental rights and human rights. The basic difference is that the fundamental rights have legal sanctity and they can be challenged in a court of law in case of violation but human rights are not recognized by the law so they can't be challenged in a court of law. The basic human rights enshrined in the Constitution of India, which are granted to all people, are fundamental rights. These rights are called fundamental rights because of two reasons because they are enshrined in the Constitution and they are justifiable. They are enforceable by courts. There are six fundamental rights of the Indian Constitution viz. Right to Equality (Article 14-18), Right to Freedom (Article 19-22), Right against Exploitation (Article 23-24), Right to Freedom of Religion (Article 25-28), Cultural and Educational Rights (Article 29-30) and Right to Constitutional Remedies (Article 32).

K. Gopinath, LO/Genl. Admn.

Many times, even after filing an FIR in a police station, no action is taken on that FIR. Here is a case where the Supreme Court issued guidelines as to what action has to be taken by the SHOs.

The factual aspect in this case is that a writ petition under Article 32 of the Indian Constitution, filed by Lalita Kumari a minor through her father for issuance of a Writ of Habeas Corpus or direction (s) of the same kind against the respondents for the protection of his minor daughter who has been kidnapped. The grievance is that, on 11.05.2008, the complainant sent a written report before the officer in charge of the police station concerned, who did not take any action on the same. After that, when the Superintendent of Police was transferred, the FIR was registered. According to the complainant, no action was taken either to prosecute the perpetrator or to rescue the minor child.

The issue framed is whether "*a police officer is bound to register a First Information Report (FIR) upon receiving any information relating to the commission of a cognizable offense under Section 154 of the Code of Criminal Procedure, 1973 ('the Code') or the police officer has the power to conduct a 'preliminary inquiry' in order to test the veracity of such information before registering the same?*"

The Hon'ble Apex Court, vide judgment dt. 12.11.2013, stated that:

1) It is mandatory to file the FIR u/s 154 of the Code if the information discloses the commission of a cognizable crime and no preliminary investigation is permissible in such a case. If the information does not reveal a cognizable offense but suggests the need for an investigation, a formal investigation will be undertaken.

2.) If the investigation reveals a cognizable offense, the FIR must be reported. If this is not the case, a copy of the entry of the closure must be sent to the first informant immediately and no longer than one week.

3.) Exceptions under which preliminary inquiry can be made before registration of FIR are Matrimonial disputes/Family disputes, Commercial offenses, Medical Negligence cases, Corruption cases Cases where there is an abnormal delay in initiating criminal prosecution.

These are only illustrative and not exhaustive.

4.) The conclusion of the preliminary investigation shall not exceed 7 days and all records relating thereto shall be reported in the General Diary, which shall be kept in the police station. [*Lalita Kumari V. Govt. of Uttar Pradesh & Others, WP (Cri) No. 68/2008, DOJ: 12.11.2013*]

B.R.R. Naidu, LO/Engg.

What are the Essential Ingredients of a Valid Arbitration Clause?

This question was discussed in Babanrao Rajaram Pund v. Samarth Builders & Developers (Hon'ble Supreme Court of India, Date Of Judgment: 07.09.2022).

Here the Builder & the Appellant had entered into a development agreement, which required the builder to construct apartments on the Appellants' land within 15 months' time. Disputes arose between the parties when the development of the plot was delayed.

The dispute resolution clause in the development agreement read as under:

"18. All the disputes or differences arising between the parties hereto as to the interpretation of this Agreement or any covenants or conditions thereof or as to the rights, duties, or liabilities of any part hereunder or as to any act, matter, or thing arising out of or relating to or under this Agreement (even though the Agreement may have been terminated), the same shall be referred to arbitration of a Sole Arbitrator mutually appointed, failing which, two Arbitrators, one to be appointed by each party to dispute or difference & these two Arbitrators will appoint a third Arbitrator & the Arbitration shall be governed by the Arbitration & Conciliation Act, 1996 or any re-enactment thereof."

When the Appellant invoked the High Court for appointment of Arbitrator U/s 11 of the Arbitration & Conciliation Act, 1996("Act"), the High Court dismissed the application stating that the dispute resolution clause lacked the essential ingredients of an arbitration agreement, as it did not mandate that the decision of the arbitrator would be final & binding on the parties.

The Supreme Court while discussing the validity of the clause, observed as below:

1. Section 7 of the Act does not mandate any particular form for an arbitration clause (Reliance placed on Rukmanibai Gupta v. Collector, Jabalpur (1980) 4SCC556 & K.K.Modi v. K.N.Modi (1998) 3SCC573).

2. The arbitration clause in the present agreement Firstly is valid, because it not only clearly uses the terms Arbitration & Arbitrator, but also enunciates the mandatory nature of the reference to arbitration by using the term "shall be referred to arbitration".

3. Secondly the method of appointing the third arbitrator has also been clearly mentioned wherein the two selected Arbitrators are to appoint a third arbitrator.

4. Thirdly Even the governing law has been chosen by the parties to be "the Arbitration & Conciliation Act, 1996 or any re-enactment thereof."

5. These three recitals strongly point towards an unambiguous intention of the parties at the time of formation of the contract to refer their disputes to arbitration.

6. The intention to be bound by the tribunal's decision is evident, even though words "final & binding" are not incorporated expressly.

Finally, the Hon'ble Apex Court held that the arbitration clause was valid & the appeal was allowed.

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

KNOW OUR CONSTITUTION

Article 76 - The Attorney General for India

1) The President shall appoint a person who is qualified to be appointed a Judge of the Supreme Court to be Attorney General for India.

(2) It shall be the duty of the Attorney General to give advice to the Government of India upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the President, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force .

(3) In the performance of his duties the Attorney General shall have right of audience in all courts in the territory of India.

(4) The Attorney General shall hold office during the pleasure of the President, and shall receive such remuneration as the President may determine Conduct of Government Business.

YOURS LEGALLY**Who is a necessary party to a lis ? Test to determine - Effect of not impleading Necessary party to the lis:**

The Supreme Court, in the case of *Mumbai International Airport Private Limited v. Regency Convention Centre and Hotels Private Limited and Others* ((2010) 7 SCC 417), has observed:

“15. A “necessary party” is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a “necessary party” is not impleaded, the suit itself is liable to be dismissed. A “proper party” is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.”

18. It could thus be seen that a “necessary party” is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. It has been held that if a “necessary party” is not impleaded, the suit itself is liable to be dismissed.

In *Kasturi v. Iyyamperumal and Others*, (2005) 6 SCC 733, the Supreme Court held thus: “7.From the above, it is now clear that two tests are to be satisfied for determining the question who is a necessary party. Tests are — (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings; (2) no effective decree can be passed in the absence of such party.”

What has been held by the Supreme Court is that for being a necessary party, the twin test has to be satisfied. The first one is that there must be a right to some relief against such party in respect of the controversies involved in the proceedings. The second one is that no effective decree can be passed in the absence of such a party.

In a recent case before the Apex court, the facts are: As per the terms of the agreement to sell, be-

tween the plaintiff and the defendant, the defendant agreed to sell his land and the plaintiff agreed to purchase the suit property for Rs.50,000/-. The plaintiff paid an amount of Rs.30,000/- on the date of the agreement and the defendant executed an earnest note in favour of the plaintiff.

However, since defendant filed to execute the sale agreement despite the fact that the plaintiff was always ready and willing to perform his part of the agreement, the plaintiff filed a suit for specific performance of sale of a property, however, without impleading the wife, and three children of the defendant who are also co-owners of the property. Though trial court and appellate court decreed in favour of the plaintiff, the High Court declined to grant specific performance but directed the defendant to repay the amount he received with 9% interest. When the matter reached the Supreme Court while considering the ratio of the apex court in the above cases, the Supreme Court held as follows:

In the instant case, the plaintiff himself has admitted in the plaint that the suit property is jointly owned by the defendant, his wife and three sons. A specific objection was also taken by the defendant in his written statement with regard to non-joinder of necessary parties. Since the suit property was jointly owned by the defendant along with his wife and three sons, an effective decree could not have been passed affecting the rights of the defendant's wife and three sons without impleading them. Even in spite of the defendant taking an objection in that regard, the plaintiff has chosen not to implead the defendant's wife and three sons as party defendants.

In view of the plaintiff's own admission that the suit property was jointly owned by the defendant, his wife and three sons, no effective decree could have been passed in their absence. In that view of the matter, no error can be noticed in the judgment of the High Court. The appeals are therefore liable to be dismissed.

The Supreme Court further held that in any case, the High Court, in order to balance the equities, has partly decreed the suit and directed the defendant to refund an amount of Rs.30,000/- with an interest at the rate of 9% per annum from the date of institution of the suit till its realization. We affirm this direction of the High Court. [*Moreshar Yadaorao Mahajan Vs.Vyankatesh Sitaram Bhedi (D) thr. LRS. And Ors.* DOJ: September 27, 2022].

Susanta Kumar Dash, LO/Pers.

TREATISE ON

The Arbitration And Conciliation Act, 1996

Section 30 – Settlement

Arbitration is one of the means of settlement of disputes done by an unbiased third person who is elected by the consent of the parties. In addition to the procedure enunciated in the previous sections of the A&C Act, 1996, the Act provides for a settlement simpliciter between the parties without resorting to arbitration.

Settle don't sue, is what we are looking forward to. If the disputes between the parties are settled through any of the non-adjudicatory mechanisms, it preserves the bonafide relations between the parties. Any dispute can be settled through Negotiation, Mediation and Conciliation. The scope of dispute settlement not only depends upon the dispute clause in the agreement but also the consent and willingness of the parties to resolve the disputes.

Settlement agreements recorded between the parties after the parties have invoked arbitration to settle disputes. The award is different from a normal arbitration awards as the dispute is not considered on the merits, but reflects the mutually agreed settlement terms of the parties. Settlement of disputes through consent awards ensures that the disputes end in amicable terms leaving each party satisfied. The consent award will have the same status and effect as arbitral award provided on merits. The consent award, including form and contents, is similar, to any other arbitral award and has same effect of any other arbitral award.

S 30 of the Act stipulates that an arbitral tribunal may encourage settlement of the disputes. With the agreement of the parties, it may use mediation, conciliation or other procedures (like negotiation or Lokadalat) at any time during the arbitral proceedings to encourage settlement. If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms. An arbitral award on agreed terms shall be made in accordance with S 31 and shall state that it is an arbitral award. Such arbitral award shall have the same status and effect as any other arbitral award on the substance of the dispute. Once an arbitration award is made on terms agreed by the parties, it shall be drawn as per procedure u/S 31. Such an award shall have the same status and effect as an arbitration award. Further S 73 of the A&C Act defines a Settlement agreement in relation with Conciliation Proceedings. When it appears to the conciliator that there exist elements of a settlement which may be acceptable to the parties, the terms of a possible settlement shall be formulat-

ed and submitted them to the parties for their remarks. After receiving the observations of the parties, the conciliator may reformulate the terms of a possible settlement in the light of such observations. If the parties reach agreement on a settlement of the dispute, they may draw up and sign a written settlement agreement. If requested by the parties, the conciliator may draw up, or assist the parties in drawing up, the settlement agreement. When the parties sign the settlement agreement, it shall be final and binding on the parties. The conciliator shall authenticate the settlement agreement and furnish a copy thereof to each of the parties. As per S 74, the settlement agreement shall have the same status and effect as if it is an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal u/S 30. It is not every agreement or arrangement between parties to the disputes, arrived at in whatever manner or form, during the pendency of conciliation proceedings that automatically acquires the status of a settlement agreement within the meaning of S 73 of the Act so as to have the same status and effect as if it is an arbitral award, for being enforced as if it were a decree of the court. It is only that agreement which has been arrived at in conformity with the manner stipulated and form envisaged and got duly authenticated in accordance with S 73 of the Act, alone can be assigned the status of a settlement agreement, within the meaning of and for effective purposes of the Act, and not otherwise. If the Settlement Agreement comes into existence u/S.73 satisfying the requirements stated therein, it gets the status and effect of an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal u/S 30 of the Act. [Mysore Cements Ltd vs Svedala Barmac Ltd on 12 March, 2003]

The High Court of Delhi held that "...a settlement agreement would have the status and effect "as if it is an arbitral award"; thus by legal fiction, a settlement agreement arrived at during the conciliation proceedings and authenticated by the conciliator has been provided the same status and effect as an arbitral award. In other words, the settlement agreement can be enforced as an arbitral award and it is not necessary for a party to institute fresh proceedings for obtaining a decree in terms thereof. It further held that "it is well settled that a legal fiction cannot be extended beyond the purpose for which it is created. S 74 of the Act creates a legal fiction to elevate the status and effect of a settlement agreement u/S 73 to an award. The purpose is clearly to enable enforcement of such agreements as an arbitral award without further adjudicatory process. The legal fiction cannot be extended to other statutes." [Anuradha SA Investments LLC & Anr. v Parsynath Developers Limited & Ors., 2017 (4) ARBLR 72 (Delhi)]

To be continued ...

N. Murali Krishna, Sr.LO