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LIVING WILL

Living Will is an advance medical directive on end-of-life treatment. A Living Will is a legal document that specifies the type of medical care that an individual does or does not want in the event they are unable to communicate their wishes.

The primary purpose of Living Will as advance medical directives is to ensure the right of self-determination and patient autonomy of a person who is unfortunately in such a position that he cannot actively decide for himself at that point in time and there is no hope for his health condition to improve. Hence, a person should have the right to refuse treatment and have a choice to determine the quality of his life and should not be forced to live by being hooked up to machines.

A Living Will addresses many medical procedures common in life-threatening situations, such as resuscitation via electric shock, ventilation, and dialysis. One can choose to allow some of these procedures or none of them. One can also indicate whether they wish to donate organs and tissues after death. Even if the patient refuses life-sustaining care, they can express the desire to receive pain medication throughout their final hours.

The concept of Living Will/ Advance Medical Directives arose primarily across jurisdictions to deal with conundrum that doctors and the families faced when a patient whose life was in question was unable to express his/her desires at such a crucial time. Since the principle of patient autonomy is of utmost importance, the supporters of advance medical directives believe in accomplishing the will of the patient by devising methods via which the patient

can communicate his desires and wishes before he reaches a stage of incompetency. It is also debated that non-recognition of advance medical directives would amount to non facilitation of a smoothened dying process, which may be violative of article 21 of the Indian Constitution and the concept of dignity that has been enshrined therein.

In India, this aspect is somewhere rooted in the case of *P. Rathinam v. Union of India, (1994) 3 SCC 394*. wherein the question of unconstitutionality of Section 309 of the Indian Penal Code arose and an analogy with freedom of speech and expression was made where it was held that the freedom of speech and expression includes freedom not to speak and a similar corollary was also drawn for the other fundamental rights as well, including for article 21 i.e., right to life and it was held that "logically it must follow that the right to live would include the right not to live, i.e., right to die or to terminate one's life."However, this judgment was overruled by the five judge bench of the Supreme Court in *Gian Kaur vs. State of Punjab, 1996 AIR 946*.

On 9th March 2018, the Supreme Court of India in the case of *Common Cause (A regd. Society) v. Union of India , (2018) 5 SCC 1* not only upheld the legality of passive euthanasia but also laid down an elaborate procedure with respect to Living Wills in India. It mandated for the 'Living Will' to be signed by the person making the same in the presence of two witnesses and a first class judicial magistrate (JMFC). The bench had also directed that for giving effect to it in case of the executor becoming terminally ill, the treating physician pursuant to being made aware about the same was also requested to ascertain the genuineness thereof from the jurisdictional JMFC before acting upon the same.

Furthermore, it was also directed that the witnesses and the jurisdictional JMFC to record their satisfaction that the document has been executed voluntarily and with full understanding of the relevant information and consequences. These above-mentioned requirements had made the process cumbersome and the people wanting to get a "Living Will" registered were facing problems.

The Supreme Court had intended to ease this process because of its non feasibility by formulating the guidelines, but the process is still as non-feasible as it was in the *Aruna Shanbaug Case*. Hence, the five-judge Constitution Bench led by Justice KM Joseph on 23rd January, 2023 re-analyzed these guidelines in a plea filed by the Indian Council for Critical Care Medicine, seeking modification of the guidelines for the Living Will (or the Advance Medical Directive). It was filed on account of problems being faced by people who wanted to get the 'Living Will' registered.

The bench agreed to modify the guidelines in order to smoothen the process. The bench further agreed in empowering the executor of the Living Will to sign the document. The bench also agreed that now the document will be signed in the presence of two attesting witnesses which will be attested before a notary or gazetted officer. The notary shall record his satisfaction that the document has been executed voluntarily and without any coercion or inducement and with full understanding of all relevant information and consequences. Through this judgment the Supreme Court has also clarified as to what happens when a terminally-ill person does not have an advanced directive.

The Apex Court *while making the process more workable has opined that now the Advance Medical Directive would serve as a fruitful means to facilitate the fructification of the sacrosanct right to life with dignity. The said Directive Will dispel many a doubt at the relevant time of need during the course of treatment of the patient. That apart, it will strengthen the mind of the treating doctors as they will be in a position to ensure, after being satisfied, that they are acting in a lawful manner.*

Wish you all a Very Happy New Year 2023!

Ajay Kumar Sharda
Director (Administration)

Effect of cognizance and commitment by Magistrate of offences under SC ST Act in view of Section 14 of SC ST Act

Introduction:

An interesting proposition came before Hon'ble Supreme Court in the case of **Shanta Ben Bhurabhai Bhuriya vs Anand Athabhai Chaudhari and others**[1] with regard to effect of direct cognizance and thereafter commitment by Magistrate of offences under SC ST Act in view of Section 14 of SC ST Act, whether entire criminal proceedings for the offences under the Atrocities Act, 1989 can be said to have been vitiated in such scenario.

Background:

One FIR came to be registered against the husband of Shantaben Bhurabhai Bhuriya (original complainant-appellant) for the offences punishable u/s 323, 353, 362, 186 and 114 of IPC at the instance of Anand Athabhai Chaudhari (first Respondent-original accused No.1) who was working as Police Sub Inspector alleging inter alia that the original accused persons obstructed the public servants in performance of their duties and was beaten by them under the guise that they were not able to catch the thief and caused injuries to them.

The Judicial Magistrate First Class (JMIC) passed an order for investigation u/s 173(8) of CrPC by observing that summary report was not clear with regard to the involvement of the original third accused and other Police Officers. Thereafter, the Deputy Superintendent of Police, SC/ST Cell, Dahod submitted its report to the Magistrate pointing out that the alleged offences are prima facie appear to have been committed by the accused persons.

Considering the report submitted by the Deputy Superintendent of Police, the Magistrate took cognizance of the alleged offences by issuances of the process u/s 204 of CrPC and summoned the accused. The same was however quashed by Hon'ble Gujarat High Court mainly, on the ground that in view of the amendment to Section 14 of the Atrocities Act, the Special Court can take cognizance directly and the jurisdiction of the Magistrate can be said to be ousted.

Feeling aggrieved of the impugned judgment passed by Hon'ble Gujarat High Court, original complainant /appellant preferred the appeal before Hon'ble Supreme Court.

Question posed:

Whether in a case where for the offences under Atrocities Act, the cognizance is taken by the Ld. Magistrate and thereafter the case is committed to the Court of Session/Special Court and cognizance is not straightway taken up by the Ld. Special Court/Court of

[1] 2021 SCC Online SC 974

Session, whether entire criminal proceedings for the offences under the Atrocities Act, 1989 can be said to have been vitiated, as so observed by the High Court in the impugned judgment and order?

Legislative History:

While considering the aforesaid issue/question, legislative history of the relevant provisions of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, more particularly, Section 14 pre-amendment and post amendment was considered. Section 14 as stood pre-amendment and post amendment reads as under:

"*Section 14. Special Court (Pre amendment) : For the purpose of proving for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the official Gazette, specify for each district a Court of Session to be a Special Court to try the offences under this Act"*

"Section 14. Special Court and Exclusive Special Court (Post amendment): (1) For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of High Court, by notification in the Official Gazette, establish an Exclusive Special Court for one or more Districts:

Provided that in Districts where less number of cases under this Act is recorded, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for such Districts, the Court of Session to be a Special Court to try the offences under this Act;

Provided further that the Courts so established or specified shall have power to directly take cognizance of offences under this Act."

After the authoritative pronouncement by Hon'ble Supreme Court in the case of **Ratti Ram vs State of Madhya Pradesh and others**[2] with regard to the delay in conclusion of the trial in the cases under SC/ST Act, it gave rise to the amendment to Section 14 of the Act by way of proviso to Section 14 came that to be in inserted by Act No.1 of 2016.Now, it has been provided that after post amendment insertion of proviso to Section 14, the Special Court so established for the purpose of providing for speedy trial or specified shall (also) have the power to directly take cognizance of the offences under the Atrocities Act, 1989.

Analysis:

Considering the aforesaid legislative history which brought to insertion of proviso to Section 14 of the Atrocities Act, by which, even the Special Court so established or specified for the

[2] (2012) 4 SCC 516

purpose of providing for speedy trial has now been empowered to directly to take cognizance of offences under the Atrocities Act, 1989.

It was observed in the case of *Shantaben Supra* that merely because, Ld.Magistrate has taken cognizance of offences and thereafter the trial of case has been committed to Special Court established for the purpose of providing the speedy trial, it cannot be said that entire criminal proceeding including FIR and Charge-sheet are to be quashed and set-aside.

The words used in the second proviso to Section 14 are "**Court so establish or specified shall have power to directly take cognizance of the offences under this Court".** The word **"only"** is conspicuously missing. If the intention of the legislature would have to confer the jurisdiction to take cognizance of the offences under the Atrocities Act exclusively with the Special Court, in that case, the wording should have been "**that the Court so establish or specified only shall have power to directly take cognizance of offences under this Court".** Thereafter, merely because now further and additional powers have been given to the Special Court also to take cognizance of the offences under the Atrocities Act and in the present case merely because the cognizance is taken by the Ld. Magistrate for the offences under the Atrocities Act and thereafter the case has been committed to the Ld. Special Court, it cannot be said that entire criminal proceedings have been vitiated and same are required to be quashed and set aside.

Conclusion:

It was conclusively held by the Hon'ble Supreme Court that simply because cognizance of the offense under the Atrocities Act is not directly taken by the Special Court, the entire criminal proceedings cannot be said to have been vitiated and cannot be quashed solely on the ground that the cognizance has been taken by the Magistrate. Accordingly, the judgment passed by Hon'ble Gujarat High Court was set aside.

Recently, the view taken by the Hon'ble Supreme Court in the case of *Shantaben (Supra)* was referred to and followed in the case of **Ramveer Upadhyay and another vs State of UP and another**[3].

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[3] 2022 SCC OnLine SC 484

LATEST CASES: CIVIL

"The concept of freedom of contract loses some significance in a contract of insurance. Such contracts demand a very high degree of prudence, good faith, disclosure and notice on the part of the insurer, being different facets of the doctrine of fairness. Though, a contract of insurance is a voluntary act on the part of the consumer, the obvious intendment is to cover any contingency that might happen in future. A premium is paid obviously for that purpose, as there is a legitimate expectation of reimbursement when an act of God happens. Therefore, an insurer is expected to keep that objective in mind, and that too from the point of view of the consumer, to cover the risk, as against a plausible repudiation."

— M.M. Sundresh, J. in Texco Marketing (P) Ltd. v. Tata Aig General Insurance Co.Ltd., (2023) 1 SCC 428, para 11

Deepak Ananda Patil v. State of Maharashtra & Ors - 2023 SCC OnLine SC 34 - Administrative Law - In an appeal arising out of impugned final judgment and order passed by the High Court of Judicature at Bombay, the Hon'ble Supreme Court held - An adjudicatory body cannot base its decision on any material unless the person against whom it is sought to be utilised has been apprised of it and given an opportunity to respond to it. Reference to the case of *T. Takano v. Securities and Exchange Board of India (2022) 8 SCC 162* was made wherein it was observed that "*a quasi judicial authority has a duty to disclose the material that has been relied upon at the stage of adjudication - the actual test is whether the material that is required to be disclosed is relevant for purpose of adjudication - if it is, then the principles of natural justice require its due disclosure.*"

Administrative Law – Effect of non-disclosure - In order to set aside the order of punishment, the aggrieved person must be able prove that prejudice has been caused to him due to non-disclosure. To prove prejudice, he must prove that had the material been disclosed to him the outcome or the punishment would have been different. The test for the extent of disclosure and the corresponding remedy for non-disclosure is dependent on the objective that the disclosure seeks to achieve. Therefore, the impact of nondisclosure on the reliability of the verdict must also be determined vis-à-vis, the overall fairness of the proceeding. While determining the reliability of the verdict and punishment, the court must also look into the possible uses of the undisclosed information for purposes ancillary to the outcome, but that which might have impacted the verdict. (Referred to *T. Takano v. Securities and Exchange Board of India (Supra) and MD, ECIL, Hyderabad v. B. Karunakar (1993) 4 SCC 727).*

Smriti Debbarma (D) vs Prabha Ranjan Debbarma - 2023 SCC OnLine SC 9 - Civil Suit for Possession – HELD – For the plaintiff to succeed it is to be established that the plaintiff has a legal right to the disputed property and consequently, is entitled to a decree of possession. The defendants cannot be dispossessed unless the plaintiff has established a better title and rights over the property. A person in possession of land in the assumed character as the owner, and exercising peaceably the ordinary rights of ownership, has a legal right against the entire world except the rightful owner. A decree of possession cannot be passed in favour of the plaintiff on the ground that defendants have not been able to fully establish their right, title and interest in the property. The defendants, being in possession, would be entitled to protect and save their possession, unless the person who seeks to dispossess them has a better legal right in the form of ownership or entitlement to possession.

Section 101-102 of Indian Evidence Act, 1872 - **Onus of proof – HELD** - Onus of proof no doubt shifts and the shifting is a continuous process in the evaluation of evidence, but this happens when in a suit for title and possession, the plaintiff has been able to create a high degree of probability to shift the onus on the defendant. In the absence of such evidence, the burden of

proof lies on the plaintiff and can be discharged only when he is able to prove title. The weakness of the defence cannot be a justification to decree the suit.

The chief engineer, water resources department & ors. Vs rattan India power limited through its director & ors. : 2023 SCC OnLine SC 45 - Whether a party to a contract is entitled to question the amount of consideration after signing the contract? No. – HELD - Principle of Estoppel applies - The party shall be bound by the agreement entered by it willfully and deliberately knowing fully well the legal and business consequences.

Sabarmati Gas Limited vs Shah Alloys Limited: 2023 SCC OnLine SC 7 - Whether in computation of the period of limitation in regard to an application filed under Section 9, IBC the period during which the operational creditor's right to proceed against or sue the corporate debtor that remain suspended by virtue of Section 22 (1) of the Sick Industrial Companies (Special Provisions Act, 1985) (SICA) can be excluded, as provided under Section 22 (5) of SICA? – Yes - HELD - "There exists a legal bar for initiation of proceedings against an industrial company by virtue of Section 22 (1), SICA and obviously, when a party was thus legally disabled from resorting to legal proceeding for recovering the outstanding dues without the permission of BIFR and even on application permission therefore was not given the period of suspension of legal proceedings is excludable in computing the period of limitation for the enforcement of such right in terms of Section 22(5), SICA. In the absence of provisions for exclusion of such period in respect of an application under Section 9, IBC, despite the combined reading of Section 238A, IBC and the provisions under the Limitation Act what is legally available to such a party is to assign the same as a sufficient cause for condoning the delay under Section 5 of the Limitation Act. In such eventuality, in accordance with the factual position obtained in any particular case viz., the period of delay and the period covered by suspension of right under Section 22 (1), SICA etc., the question of condonation of delay has to be considered lest it will result in injustice as the party was statutorily prevented from initiating action against the industrial company concerned."

Whether the respondent has raised a dispute which is describable as 'pre-existing dispute' between itself and the appellant warranting dismissal of application under Section 9 of the IBC at the threshold?-Referring to *Macquarie Bank Limited (supra) and Mobilox Innovations (P) Ltd. (2018) 2 SCC 674 and Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd. (2018) 1 SCC 353)* **– HELD –** that it is a settled position that existence of a 'pre-existing dispute' should entail dismissal of an application filed under Section 9 IBC at the threshold. Taking note of the nature of the dispute of the respondent in the present case in respect of the claim made by the appellant, while dismissing the appeal, **HELD :** "we do not find any reason to disagree with the concurrent findings of the Tribunals that there existed a 'pre-existing dispute' between the parties before the receipt of demand notice under Section 8, IBC. In other words, the dismissal of the application under Section 9, IBC on the ground of 'pre-existing dispute' cannot be held to be patently illegal or perverse."

Basavaraj vs Padmavathi - 2023 SCC OnLine SC 10 - Section 16 - Specific Relief Act, 1963 - Suit for Specific Performance – Proof of Readiness and Willingness – HELD – "Unless the plaintiff was called upon to produce the passbook either by the defendant or the Court orders him to do so, no adverse inference can be drawn." (Referred to *Indira Kaur vs. Sheo Lal Kapoor (1988) 2 SCC 488 and Ramrati Kuer vs. Dwarika Prasad Singh; (1967) 1 SCR 153)*.

Manik Majumder And Ors. v. Dipak Kumar Saha (Dead) through Lrs. And Ors: 2023 SCC OnLine SC 37 – Whether the non-production of the deed of Power of Attorney in the suit is fatal to the case of the plaintiff when a sale deed is executed on the strength of a deed of Power Attorney?-HELD- In view of difference of opinion in the matter, the matter is directed to be placed before Hon'ble the Chief Justice of India for appropriate orders for constituting a larger Bench to decide the controversy.

Karuna Sharma
Faculty Member

LATEST CASES: CRIMINAL

"If a criminal court is to be an effective instrument in dispensing justice, the presiding Judge must cease to be a spectator and a mere recording machine. He must become a participant in the trial by evincing intelligent active interest by putting questions to witnesses in order to ascertain the truth."

— Bela M. Trivedi, J. in Rahul v. State (NCT of Delhi), (2023) 1 SCC 83, para 44

Rajaram S/o. Sriramulu Naidu (D) through LRS. Vs. Maruthachalam (D) through LRS.:2023 SCC OnLine SC 48- Scope of interference in an appeal against acquittal? -HELD- Hearing a Criminal Appeal against the judgment and order of conviction under Section 138 of the Negotiable Instruments Act, 1881, the Hon'ble Supreme Court has held that the scope of interference in an appeal against acquittal is limited. Unless the High Court found that the appreciation of the evidence is perverse, it could not have interfered with the finding of acquittal recorded by the learned Trial Court.

Jabir & Ors. Vs. State of Uttarakhand: 2023 SCC OnLine SC 32- Circumstantial evidence? -HELD- Hearing a Criminal Appeal against the judgment of conviction under Sections 302, 364 and 201 of the Indian Penal Code, 1860, the Hon'ble Supreme Court, citing golden principles laid down in ***Sharad Birdhi Chand Sarda vs. State of Maharashtra, 1985 (1) SCR 88,*** has held that a basic principle of criminal jurisprudence is that in circumstantial evidence cases, the prosecution is obliged to prove each circumstance, beyond reasonable doubt, as well as the links between all circumstances; such circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability, the crime was committed by the accused and none else; further, the facts so proved should unerringly point towards the guilt of the accused.

The Hon'ble Court has further held that the circumstantial evidence, in order to sustain conviction, must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused, and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

Bimla Tiwari Vs. State of Bihar & Ors.: 2023 SCC OnLine SC 51 - Can offer of paying money results in concession for Bail?- HELD-Hearing a Criminal Special Leave Petition against the judgment granting the concession of pre-arrest bail taking note of the offer made by the accused of making payment of a sum to the petitioner/informant in case pertaining to offences under Sections 406 and 420 of the Indian Penal Code, 1860 and Sections 3 and 4 of the Dowry Prohibition Act, 1961, the Hon'ble Supreme Court has held that the process of criminal law, particularly in matters of grant of bail, is not akin to money recovery proceedings. The Hon'ble Court has reiterated that the process of criminal law cannot be utilised for arm-twisting and money recovery, particularly while opposing the prayer for bail. The question as to whether pre-arrest bail, or for that matter regular bail, in a given case is to be granted or not is required to be examined and the discretion is required to be exercised by the Court with reference to the material on record and the parameters governing bail considerations.

The State through Central Bureau of Investigation Vs. T. Gangi Reddy @ Yerra Gangi Reddy:2023 SCC OnLine SC 25 : Whether the bail granted under Section 167(2) Cr.P.C. can be cancelled after the presentation of a chargesheet, if yes, on what grounds and circumstances?-HELD- Hearing a Criminal Appeal against the judgment dismissing the petition preferred by Central Bureau of Investigation under Section 439(2) of the Code of Criminal Procedure, to cancel the default bail under Section 167(2) Cr.P.C., the Hon'ble Supreme Court has held that mere filing of the chargesheet subsequent to a person is released on default bail under Section 167(2) Cr.P.C. cannot be a ground to cancel the bail of a person, who is released on default bail. However, on filing of the chargesheet on conclusion of the investigation, if a strong case is made out and on merits, it is found that he has committed a non-bailable offence/crime, on the special reasons/grounds and considering Section 437(5) and Section 439(2) Cr.P.C, over and above other grounds on which the bail to a person, who is released on bail can be cancelled on merits. The Hon'ble Court has further held that there is no absolute bar that once a person is released on default bail

under Section 167(2) Cr.P.C., his bail cannot be cancelled on merits and his bail can be cancelled on other general grounds like tampering with the evidence/witnesses; not cooperating with the investigating agency and/or not cooperating with the concerned Trial Court etc.. The Hon'ble Court has further held that in a given case, even if the accused has committed a very serious offence, may be under the NDPS or even committed murder(s), still however, he manages through a convenient investigating officer and he manages not to file the chargesheet within the prescribed time limit mentioned under Section 167(2) Cr.P.C. and got released on default bail, it may lead to giving a premium to illegality and/or dishonesty. Such release of the accused on default bail is not on merits at all, and is on the eventuality occurring in proviso to sub-section (2) of Section 167.

However, subsequently on curing the defects and filing the chargesheet, though a strong case is made out that an accused has committed the very serious offence and non-bailable crime, the Court cannot cancel the bail and commit the person into custody and not to consider the gravity of the offence committed by the accused, the Courts will be loathe for such an interpretation, as that would frustrate the justice. The Courts have the power to cancel the bail and to examine the merits of the case in a case where the accused is released on default bail and released not on merits earlier. Such an interpretation would be in furtherance to the administration of justice.

Boby Vs. State of Kerala: 2023 SCC OnLine SC 50- Discovery under Section 27 of the Evidence Act? - HELD- Hearing a Criminal Appeal against the judgment dismissing the appeals upholding the judgment of conviction and sentence for the offence punishable under Sections 302, 364, 395, and 201 read with Section 34 IPC, the Hon'ble Supreme Court has held that Section 27 of the Evidence Act requires that the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to the said fact. The information as to past user, or the past history, of the object produced is not related to its discovery.

Deepak Gaba and Ors. Vs. State of Uttar Pradesh and Anr.: 2023 SCC OnLine SC 3- Essentials while summoning? - HELD- Hearing a Criminal Appeal against the judgment dismissing the petition under Section 482 of the Code of Criminal Procedure challenging the summoning under Section 406 of the Indian Penal Code, 1860, the Hon'ble Supreme Court has held that the court must cautiously examine the facts to ascertain whether they only constitute a civil wrong, as the ingredients of criminal wrong are missing.

The Hon'ble Court has further held that a conscious application of the said aspects is required by the Magistrate, as a summoning order has grave consequences of setting criminal proceedings in motion. Even though at the stage of issuing process to the accused the Magistrate is not required to record detailed reasons, there should be adequate evidence on record to set the criminal proceedings into motion. The requirement of Section 204 of the Code is that the Magistrate should carefully scrutinize the evidence brought on record. He/she may even put questions to complainant and his/her witnesses when examined under Section 200 of the Code to elicit answers to find out the truth about the allegations. Only upon being satisfied that there is sufficient ground for summoning the accused to stand the trial, summons should be issued. Summoning order is to be passed when the complainant discloses the offence, and when there is material that supports and constitutes essential ingredients of the offence. It should not be passed lightly or as a matter of course.

The Hon'ble Court has further held that when the violation of law alleged is clearly debatable and doubtful, either on account of paucity and lack of clarity of facts, or on application of law to the facts, the Magistrate must ensure clarification of the ambiguities. Summoning without appreciation of the legal provisions and their application to the facts may result in an innocent being summoned to stand the prosecution/trial. Initiation of prosecution and summoning of the accused to stand trial, apart from monetary loss, sacrifice of time, and effort to prepare a defence, also causes humiliation and disrepute in the society. It results in anxiety of uncertain times.

Amrinder Singh Shergill
Additional District & Sessions Judge
-cum-Faculty Member, CJA

LATEST CASES: ARBITRATION

"It is a consistent view of the Supreme Court, that there can be no promissory estoppel against the legislature in the exercise of its legislative functions."

— B.R. Gavai, J., in Hero Motocorp Ltd. v. Union of India, (2023) 1 SCC 386, para 68

Alpine Housing Development Corpn. (P) Ltd. v. Ashok S. Dhariwal: 2023 SCC OnLine SC 55- Whether the applicant can be permitted to adduce evidence to support the ground relating to public policy in an application filed under Section 34 of the Arbitration & Conciliation Act, 1996?-HELD- The Court noted that, in the present case the arbitration proceedings commenced and even the award was passed by the Arbitral Tribunal in the year 1998, i.e., prior to Section 34(2)(a) came to be amended vide the Arbitration and Conciliation (Amendment) Act, 2019 , and opined that Section 34(2)(a) pre-amendment shall be applicable.

The Court took note of *Fiza Developers & Inter-Trade (P) Ltd.* v. *Amci (I) (P) Ltd.*, (2009) 17 SCC 796 ,*Canara Nidhi Ltd.* v. *M. Shashikala*, (2019) 9 SCC 462, and *Emkay Global Financial Services Ltd.* v. *Girdhar Sondhi*, (2018) 9 SCC 49, and said that:

- The ratio of the aforesaid three decisions on the scope and ambit of section 34(2)(a) pre-amendment would be that applications under Sections 34 of the A & C Act are summary proceedings.
- An award can be set aside only on the grounds set out in section 34(2)(a) and section 34(2) (b)
- Speedy resolution of the arbitral disputes has been the reason for enactment of 1996 Act and continues to be a reason for adding amendments to the said Act to strengthen the aforesaid object
- An application for setting aside the arbitral award will not ordinarily require anything beyond the record that was before the arbitrator.

However, if there are matters not containing such records and the relevant determination to the issues arising under section 34(2)(a), they may be brought to the notice of the Court by way of affidavits filed by both the parties', the cross-examination of the persons swearing in the affidavits should not be allowed, unless necessary, as the truth will emerge on the reading of the affidavits filed by both the parties.

Therefore, in an exceptional case being made out and if it is brought to the Court on the matters not containing the record of the arbitrator that certain things are relevant to the determination of the issues arising under section 34(2)(a), then the party who has assailed the award on the grounds set out in section 34(2)(a) can be permitted to file affidavit in the form of evidence. However, this shall be allowed unless absolutely necessary.

The Court said that the ground that the arbitral award conflicts with the public policy of India could be available only after passing of the award. Therefore, the same can be permitted to be agitated in an application under Section 34 of the Act and the person shall not have to wait till the execution is filed. The defence that the arbitral award conflicts with the public policy of India itself can be a ground to set aside the award in view of section 34(2)(b) of the Act.

Shyamjee Prepaid Services v. Top Steels: Arbitration Petition No. 137 of 2019 decided on 18-01-2023- (i)Whether the dissolution of a partnership firm will bar the erstwhile partner from invoking Section 11 of the Act, 1996, in case of a disagreement with a third party?- HELD- Section 47 of the Indian Partnership Act, 1932 makes it further clear that even after the dissolution of a Partnership firm, the partner's rights and responsibilities continue to accrue in order to complete the uncompleted transactions at the time of dissolution.

A combined interpretation of Section 16 (1) (a) and Section 40 (1) of the Arbitration and

Conciliation Act, 1996 demonstrates unequivocally that **the arbitration provision will continue in effect even after the death of a partner causes the dissolution of the partnership. Thus, a partnership firm is nothing more than a compendium of the partners' individual names and an act done by a firm is an act done by its partners.** Thus, for the purposes of winding up or dissolution, it is necessary to complete the entire transaction pending between the firm and the third party. Consequently, the said firm shall not be barred from invoking the arbitration clause.

ii. Whether the appointment of an arbitrator by virtue of Section 11 of the Act, 1996 be reviewed?

The Court noted that the Act of 1996 does not contain any legislative provisions for reviewing the order recorded by the Court according to Section 11(6) of the Act, 1996. It is also well-established that a substantive review is distinct from a procedural review. The power of substantive review must be bestowed in a court by statute, and in the absence of such power, the court cannot engage in substantive review. However, every court and tribunal is obligated to conduct a procedural review of its judgement and, if a procedural error is discovered, to reverse the decision.

Placing reliance on *S.B.P. & Co.* v. *Patel Engineering Ltd.*, (2005) 8 SCC 618, *Jain Studios Ltd.* v. *Shin Satellite Public Co. Ltd*.; (2006) 5 SCC 501 and *State of West Bengal* v. *Associated Contractor*; (2015) 1 SCC 32, the Court observed that the Courts can examine orders with procedural irregularities such as wrong hearing dates, no notification, etc. Furthermore, the Court's competence to review Section 11 orders is unaffected by substantive concerns like a Tribunal's jurisdiction or the authenticity of the evidence.

iii. What is the scope of review and whether the present application seeking review of order be allowed?

The Court noted that the power of review is distinct from Court's power to hear appeals, i.e., the appellate jurisdiction. Thus, in order to address unintentional errors or injustice, exceptions have been carved out both statutorily and legally. The courts withheld this authority to prevent misuse of the legal system or a miscarriage of justice, even in the absence of any statutes or norms defining the situations under which it may review an order.

Placing reliance on *Kamlesh Verma* v. *Mayawati*, (2013) 8 SCC 320, the Court recorded that despite the factum of death of the former partner, Mr. Vinod Kumar Goel being mentioned in the petition by the petitioner, the respondent chose to remain silent with respect to the dissolution of the partnership on the said account, and the respondent is presenting the said basis for the first time in the current review petitions.

The Court concluded that only errors that are apparent on record may be reviewed and errors required to be discovered through a process of reasoning cannot and thus, the respondent / applicant has failed to point out any mistake that is obvious on the face of the record, which is required for a cause of review.

Monika Oli v. CL Educate Limited: 2023 SCC OnLine Del 177- I. Whether the present petition under Section 34 of the Arbitration Act is barred by limitation? (ii) Whether the various correspondences between the Petitioner, Respondent and the Arbitrator constitute as a valid notice under Section 21 of the Arbitration Act? III. Whether the impugned arbitral award is liable to be set aside on the ground that the Arbitrator has wrongly applied the Indian law as the

substantive/governing law of the Contract? -HELD- the Court held

There was no effective delivery of the arbitral award to the Petitioner and the present case is fully covered by the decisions of the Supreme Court in *Union of India* v. *Tecco Trichy Engineers & Contractors*, (2005) 4 SCC 239, *Benarsi Krishna Committee* v. *Karmyogi Shelters Pvt. Ltd.,* (2012) 9 SCC 496, and ARK Builders ((2011) 4 SCC 616,).

The present application is within the purview of limitation as envisaged under Section 34(3) of the Arbitration Act.

No mandatory notice under Section 21 of the Arbitration Act was given to the Petitioner, in view of the dictum of the Division Bench of this Court in *Shriram Transport (2022) SCC OnLine Del 3412,).*

The Arbitrator has applied the wrong governing law while adjudicating the disputes between the parties. The entire dispute was to be adjudicated by the substantive law of the Contract which was the UAE Federal Labour Law in view of the dictum of the Supreme Court of the United Kingdom in *Enka Insaat ([2020] UKSC 38).*

Bennett Coleman & Co. Limited v. MAD (India) Pvt. Ltd.: 2022 SCC OnLine Bom 7807- Whether a clause contemplating reference of disputes and differences arising out of, or in relation to a contract or order of advertisement, bill or otherwise breach thereof, to be referred to Sole Arbitrator, printed at the back of the tax invoice would amount to an arbitration clause?-HELD- that the parties have acted upon the invoices and there was no denial of the invoices raised by the applicant, the clause contained in the invoices which clearly stipulate a reference to arbitration, deserve to be construed as an arbitration clause.

Reliance was placed on a decision of the present Court rendered by G S Kulkarni, J., in *Concrete Additives and Chemicals* v. *S.N. Engineering Services Pvt. Ltd.*, Arbitration Application (L) No. 23207 of 2021, wherein the Court dealt with a clause where the dispute had arisen under the unpaid invoices which have been received, acknowledged, and acted upon by the respondent, which contained the terms of supply and a process for being referred to arbitration, thus, the Court crystallized the law that to the effect that any document in writing exchanged between the parties which provide a record of the agreement and in respect of which there is no denial by the other side, would squarely fall within the ambit of Section 7 of Arbitration and Conciliation Act, 1996 and would amount to an arbitration clause.

The Court held that it can be clearly seen that the parties have acted upon the invoices and there was no denial of the invoices raised by the applicant, the clause contained in the invoices which clearly stipulate a reference to arbitration, deserve to be construed as an arbitration clause.

Sanghvi Movers Limited v. Vivid Solaire Energy Private Limited : 2022 SCC OnLine Del 4423- Purchase orders do not in any manner supersede the contract between the parties-HELD- that The parties may choose to enter two different contracts covering the same transaction at different points of time, however, the purchase orders do not in any manner supersede the contract between the parties. The Court further held that the purchase orders having been issued based on the contract between the parties, the parties would be governed by the arbitration clause as contained in the contract, even though the arbitration clause is not specifically incorporated in the purchase orders.

Mahima Tuli
Research Fellow

NOTIFICATION

1. **Renewal of certificate of registration of Government vehicles, introduced vide Central Motor Vehicles (First Amendment) Rules, 2023:** On 17-1-2023, the Ministry of Road Transport and Highways notified Central Motor Vehicles (First Amendment) Rules, 2023 to amend the Central Motor Vehicles Rules, 1989. The provisions of this circular will come into force on 1-4-2023.

Applicability: Applicable on Government Vehicles and does not apply to special purpose vehicles used for operational purposes for defense and for maintenance of law and order and internal security.

Key Points:

1. Rule 52-A has been inserted which talks about the Renewal of certificate of registration of Government vehicles.
2. The following vehicles of these Government bodies will be considered as Government vehicles:
    - The Central Government (‘CG');
    - The State Government ('SG') or Union Territory administrations;
    - Any Municipal Corporation or Municipality or Panchayat;
    - A State transport undertaking established under the Road Transport Corporation Act, 1950 and the Companies Act, 2013;
    - Public sector undertaking;
    - An autonomous body owned or controlled by the CG or the SG.
3. Registration of these vehicles will expire 15 years from the date of initial registration.
4. **Disposal of vehicles:** after the expiry of 15 years, the vehicle has to be sent to the Registered Vehicle Scrapping Facility.[4]

[4] https://taxguru.in/corporate-law/central-motor-vehicles-first-amendment-rules-2023.html

EVENTS OF THE MONTH

- Four batches of 36 Public Prosecutors each from the state of Punjab & two batches of Public Prosecutors from UT Chandigarh were held at the Chandigarh Judicial Academy from January 4-6, January 11-13, January 16-18 and January 23-25, 2023. The training programme was focused on topics such as NDPS ACT, 1985, Crime against Women, Protection of Children from Sexual Offences Act, 2012, I.T. & Cyber Laws and Unlawful Activities (Prevention) Act, 1967. The resource persons for the training were Sh.Pradeep Mehta, Joint Director Prosecutor (Punjab) Retd., Faculty Member, CJA (Course Coordinator), Ms.Madhu Khanna Lalli, ADJ-cum-Faculty Member, CJA, Sh.Amrinder Singh Shergill, ADJ-cum-Faculty Member, CJA, Ms.Sonia Kinra, ADJ-cum-Faculty Member, CJA, Ms.Harshali Chowdhary, ADJ-cum-Faculty Member, CJA and Ms.Karuna Sharma, Civil Judge (Jr. Division), CJA.
- One day online workshop on Family Courts Act, 1984 was held by the Chandigarh Judicial Academy for the Additional District & Sessions Judges (Family Court) from the states of Punjab, Haryana and UT Chandigarh on January 14, 2023. The Resource Persons for the workshop were Hon'ble Mrs. Justice Manjari Nehru Kaul, Judge, Punjab & Haryana High Court, Hon'ble Mrs. Justice Ritu Tagore, Judge, Punjab & Haryana High Court, Dr. (Prof). Paramjeet Singh and Ms.Madhu Khanna Lalli, ADJ-cum-Faculty Member, CJA (Course Coordinator).
- The Chandigarh Judicial Academy organized online one day Refresher Course for Civil Judges of Punjab, Haryana and UT Chandigarh on January 14, 2023. The topics for the course included Expeditious Disposal of Execution Cases by Sh.Amrinder Singh Shergill, ADJ-cum-Faculty Member

(Course Coordinator), Shamlat and Jumla Mushtarka Malkan Lands: Rights of Properitors and Panchayats & Interpreting Jamabandis to Ascertain Rights of the Parties in Civil Litigation: Practical Problem by Sh.B.M.Lal, Faculty Member and Important Judgments by Hon'ble Supreme Court of India and Hon'ble High Courts & Criminal Procedure (Identification) Act, 2022 by Ms.Karuna Sharma, Civil Judge (Jr. Divn.)-cum-Faculty Member, CJA.

- One day workshop on Land Acquisition for ADJs dealing with Land Acquisition Cases from the states of Punjab, Haryana & UT Chandigarh was held on January 28, 2023. The resource persons for the workshop included Hon'ble Mr. Justice Anil Kshetarpal, Judge, Punjab & Haryana High Court Justice Rajive Bhalla, Judge, Punjab & Haryana High Court (Retd.), Sh.B.M.Lal, Faculty Member, CJA (Course Coordinator). One session was exclusively on Directions on important judgments and orders by the Hon'ble Supreme Court and Hon'ble Punjab & Haryana High Court by Ms.Harshali Chowdhary, ADJ-cum-Faculty Member, CJA.
- The Chandigarh Judicial Academy organized a one day Refresher Course for Civil Judges of Punjab, Haryana and UT Chandigarh on January 28, 2023. The topics for the course included Important Stages of Criminal Trial by Justice Arun Kumar Tyagi, Judge, Punjab & Haryana High Court (Retd.), Expeditious Disposal of Execution Cases by Sh.Amrinder Singh Shergill, ADJ-cum-Faculty Member (Course Coordinator), Shamlat and Jumla Mushtarka Malkan Lands: Rights of Proprietors and Panchyats by Sh.B.M.Lal, Faculty Member and Important Judgments by Hon'ble Supreme Court of India and Hon'ble High Courts & Criminal Procedure (Identification) Act, 2022 by Ms.Karuna Sharma, Civil Judge (Jr. Divn.)-cum-Faculty Member, CJA.

PICTORIAL GLIMPSES

Training of Public Prosecutor (Batch-I)

Training of Public Prosecutor (Batch-II)

Training of Public Prosecutor (Batch-III)

Training of Public Prosecutor (Batch-IV)