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FROM THE DESK OF CHIEF EDITOR

The Role of District Judiciary

The Constitution provides for three tier Judicial System of Courts. The Ground Floor is given to the District Courts. The High Courts occupy the First Floor. The Top-Floor is allotted to the Top Court – The Supreme Court. The importance of the Ground Floor cannot be undermined. Infact, it provides the foundation. If the foundation is strong, the strength will automatically flow up-wards. The District Judiciary plays an important role. The first interface of the people is at the level of District Judiciary. Even otherwise, the first contact is always with the entry point. The entry point is the first access to the Courts. Therefore, the first access should be like the Indian Coffee House. Within reach. Yet good and effective service. Without hiccups and road blocks. No handicaps.

The trust and the confidence of the people in the District Judiciary is the sine qua non of our Judicial System. This is our first concern. I have been a student of Constitution Law since 1964 when I joined my law classes (57 years). One of the serious concern has been the District Judiciary. My specific reference is to Article 235 of the Constitution. It speaks of control of High Courts over District Courts and **Courts Subordinate** thereto. It also says – 'any post **Inferior** to the post of District Judge'. The Courts subordinate to the District Courts and posts inferior to the post of District Judge. The control of the High Court is a separate issue. The District Judiciary is one unit, a wholesome unit. The District Judiciary is divided into two parts. The District Courts and the Courts Subordinate thereto. The Judges of the **Subordinate Courts** hold posts Inferior to the post of District Judge. These two expressions : **Subordinate Courts** and **Inferior Posts** are not happy expressions. It is true that within the District Courts, there is a hierarchy of Courts. At each level, the Court exercises statutory jurisdiction vested in it. In exercise of its jurisdiction, each Court is independent and is not subordinate or inferior to any other Court. There cannot be any interference so far as the exercise of jurisdiction is concerned. The order/judgment of each

Court is subject to the statutory right of appeal. The appellate Courts can interfere with the orders / judgments if they are not found to be in accordance with law. The appellate jurisdiction does not render it to be a Subordinate Court. In the hierarchy, each Court stands at its own level. In short, the appellate Court can only consider the order/judgment which comes on appeal before it. The appellate Court, therefore, cannot interfere in the exercise of its jurisdiction unless the matter is on appeal before it. All Courts are independent. No Court can claim jurisdiction of any kind over another Court. These issues are regulated by statutory provisions and not merely on the basis of the hierarchy of Courts. Accordingly, the expressions subordinate Courts and inferior posts militate against the exercise of independent jurisdiction of its own. These expressions are not in consonance with the dignity of the Court. They need to be avoided. In fact, there is no material available in the Constituent Assembly Debates as to why these expressions were specifically used. It seems, they were not subjected to meaningful debate and discussion.

It is relevant to refer to the circular dated August 11, 2021 of High Court of Himachal Pradesh, Shimla in this context:

> It has been resolved by the High Court of Himachal Pradesh that hereinafter, all the Courts in the State other than the High Court shall be referred to as “District Courts”. Furthermore, these Courts shall not be referred to as Subordinate Courts. They shall hereinafter be referred to as “Trial Court”.

This resolution of the HP High Court seems to be well considered and deliberated. There would be no Subordinate Courts. They would be hereinafter referred to as “Trial Court”. It is submitted that this change does not in any manner violate Article 235 of the Constitution. As already said, the CA Debates nowhere indicate, why the two expressions were used. Therefore, this change is in consonance with the independence of the District Judiciary. It also is in conformity with the spirit of the institution of Indian Judiciary. The fact of the matter is that Article 235 needs to be recast as advocated by Professor Upendra Baxi in his recent article : **Undoing Judicial Feudalism** in Indian Express of August 23, 2021. HP High Court deserves an applaud for uplifting the District Judiciary from subordination. The esteem of the District Judiciary is no less important. I have a feeling that if other High Courts could also follow and adopt the same change, it would be a healthy change. It would add to the dignity of the District Judiciary. The role of the District Judiciary after seven decades of the Indian Constitution has certainly assumed new height. It is also a partner in achieving the vision and the values of the Indian Constitution. The sooner we realize, the better it would be.

Balram K. Gupta

LATEST CASES: CIVIL

"*Society is emerging through a crucial transformational period. Intimacies of marriage lie within a core zone of privacy, which is inviolable and even matters of faith would have the least effect on them. The right to marry a person of choice is integral to Article 21 of the Constitution. Autonomy of an individual inter alia in relation to family and marriage is integral to the dignity of the individual*."

- *Sanjay Kishan Kaul, J., Laxmibai Chandaragi B. v. State of Karnataka, (2021) 3 SCC 360, para 12*

Saurav Jain Vs. A. B. P. Design: 2021 SCC OnLine SC 552- Order XLI Rule 22 CPC- Cross Objection Not Necessary To Challenge Adverse Findings -HELD- The Supreme Court observed that a party in whose favour a court has decreed the suit can challenge an adverse finding before the appellate court without a cross objection.

It is not necessary that a challenge to the adverse findings of the lower court needs to be made in the form of a memorandum of cross-objection, the Supreme Court bench observed.

The Court also observed that it can entertain new grounds raised for the first time in an appeal under Article 136 of the Constitution if it involves a question of law which does not require adducing additional evidence.

The court then discussed the applicability of the principle in Order XLI Rule 22 CPC to proceedings before this Court under Article 136 of the Constitution.

"The principle stipulated in Order XLI Rule 22 of CPC can be applied to petitions under Article 136 of the Constitution because of this Court's wide powers to do justice under Article 142 of the Constitution. Since the principle in Order XLI Rule 22 of the CPC furthers the cause of justice by providing the party other than the 'aggrieved party' to raise any adverse findings against them, this Court can draw colour from Order XLI Rule 22 CPC and permit objections to findings.", the bench observed.

The bench noted that the ground of jurisdiction was only raised by the appellant before the Trial Court and not before the High Court. However, referring to earlier judgments, the bench said that the plea of a bar or lack of jurisdiction can be entertained at any stage, since an order or decree passed without jurisdiction is nonest in law.

Narayan Deorao Javle (Deceased) Vs. Krishna: 2021 SCC OnLine SC 608 - Right Of Equity Of Redemption Of Mortgage Is Subsidiary To Right Of Ownership-HELD- The Supreme Court observed that the right of equity of redemption is subsidiary to the right of ownership.

The expression equity of redemption is a convenient maxim but an owner, who has stepped into the shoes of the mortgagor, after the purchase from the mortgagor but before filing a suit for foreclosure is entitled to redeem the property in terms of Section 60 of the Transfer of Property Act.

One of the issues raised in appeal was whether the plaintiff was a necessary party in a suit for foreclosure filed by the

mortgagee after the purchase? The court observed that the plaintiff rightly claimed that he was required to be impleaded, as he was a necessary party in a suit for foreclosure filed by the mortgagee after the purchase of part of the mortgaged land.

Suman Chadha vs. Central Bank of India: 2021 SCC OnLine SC 564- Wilful Breach Of Undertaking Given To Court Is Contempt-HELD- The Supreme Court observed that the wilful breach of the undertaking given to the Court can amount to Contempt under Section 2(b) of the Contempt of Courts Act.

An undertaking given by a party should be seen in the context in which it was made and (i) the benefits that accrued to the undertaking party; and (ii) the detriment/injury suffered by the counter party, the bench observed. The bench further observed that *"It is also true that normally the question whether a party is guilty of contempt is to be seen in the specific context of the disobedience and the wilful nature of the same and not on the basis of the conduct subsequent thereto. While it is open to the court to see whether the subsequent conduct of the alleged contemnor would tantamount to an aggravation of the contempt already committed, the very determination of an act of contempt cannot simply be based upon the subsequent conduct.. But the subsequent conduct of the party may throw light upon one important aspect namely whether it was just the inability of the party to honour the commitment or it was part of a larger design to hoodwink the court."*, it added.

Taking note of the facts of the case, the bench observed that it is unable to find fault with the High Court holding the petitioners guilty of contempt. The court therefore upheld the finding of guilt, but ordered reduction of the period of sentence from three months to the period of imprisonment already suffered/undergone.

Srihari Hanumandas Totala vs Hemant Vithal Kamat : 2021 SCC OnLine SC 565- Res Judicata Is Not A Ground To Reject A Plaint Under Order VII Rule 11(d) CPC-HELD- The Supreme Court observed that the Res Judicata cannot be a ground for rejection of the plaint under Order VII Rule 11(d) of the Code of Civil Procedure.

"Since an adjudication of the plea of res judicata requires consideration of the pleadings, issues and decision in the 'previous suit', such a plea will be beyond the scope of Order 7 Rule 11 (d), where only the statements in the plaint will have to be perused.", the bench observed.

The court also referred to various decisions on the aspect of res judicata including *Soumitra Kumar Sen v. Shyamal Kumar Sen, Kamala & others v. KT Eshwara Shakti Bhog Food Industries Ltd. v. Central Bank of India* and observed as follows:

(i) To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to;

(ii) The defense made by the defendant in the suit must not be considered while deciding the merits of the application;

(iii) To determine whether a suit is barred by res judicata, it is necessary that (i) the 'previous suit' is decided, (ii) the issues in the subsequent suit were directly and substantially in issue in the former suit; (iii)

the former suit was between the same parties or parties through whom they claim, litigating under the same title; and (iv) that these issues were adjudicated and finally decided by a court competent to try the subsequent suit; and

(iv) Since an adjudication of the plea of res judicata requires consideration of the pleadings, issues and decision in the 'previous suit', such a plea will be beyond the scope of Order 7 Rule 11 (d), where only the statements in the plaint will have to be perused.

Perusing the plaint, the bench observed that it does not disclose any fact to conclude that it deserves to be rejected on the ground that it is barred by principles of res judicata. While affirming the Trial Court order, the bench clarified that it has not expressed any opinion on whether the subsequent suit is barred by the principles of res judicata.

Saurav Jain Vs. A. B. P. Design: 2021 SCC OnLine SC 552- Article 136: Pure Question Of Law Can Be Raised For The First Time In SLP -HELD- The Supreme Court observed that it can entertain new grounds raised for the first time in an appeal under Article 136 of the Constitution if it involves a question of law which does not require adducing additional evidence.

The principle in Order XLI Rule 22 of the Code of Civil Procedure furthers the cause of justice by providing the party other than the 'aggrieved party' to raise any adverse findings against them and this Court can draw colour from it and permit objections to findings, the SC bench observed.

Neelima Sreevastava vs. State of Uttar Pradesh: 2021 SCC OnLine SC 610 - Mere Over-ruling Of Principles By A Subsequent Judgment Will Not Dilute Binding Effect Of Decision On Inter-parties-HELD- Emphasizing the distinction between over-ruling a principle and reversal of the judgment, the Supreme Court observed that mere over-ruling of the principles by a subsequent judgment will not dilute the binding effect of the decision on inter-parties.

"Mere over-ruling of the principles, on which the earlier judgment was passed, by a subsequent judgment of higher forum will not have the effect of uprooting the final adjudication between the parties and set it at naught.", the bench observed.

Karuna Sharma
Civil Judge (Jr.Divn.)/JMIC
-cum-Faculty Member, CJA

LATEST CASES: CRIMINAL

"*The legislature does not always say everything on the subject. When it enacts a law, every conceivable eventuality which may arise in the future may not be present to the mind of the lawmaker. Legislative silences create spaces for creativity. Between interstices of legislative spaces and silences, the law is shaped by the robust application of common sense*."

- Dr D.Y. Chandrachud, J. in Union of India v. G.S. Chatha Rice Mills, (2021) 2 SCC 209, para 57

Umesh Chandra vs. State of Uttarakhand: Criminal Appeal No. 801 of 2021 Dt. 11. 08.2021: There Cannot Be Repeated Test Identification Parades till Accused Is Identified-HELD- In this case, the accused were convicted by the Trial Court on the basis of them being identified in a test identification parade (TIP). In appeal before the Supreme Court, they contended that the conviction based on the TIP is unsustainable as no TIP has been proved to have been held in accordance with law. The bench observed that mere identification in the test identification parade cannot form the substantive basis for conviction unless there are other facts and circumstances corroborating the identification. It reiterated that a test identification parade under Section 9 of the Evidence Act is not substantive evidence in a criminal prosecution but is only corroborative evidence.

Kaptan Singh vs State of Uttar Pradesh: 2021 SCC OnLine SC 580: Improper To Quash FIR U/s 482 Cr.PC When There Are Serious Triable Allegations In Complaint- HELD- The Supreme Court observed that it is improper to quash criminal proceedings under Section 482 of Criminal Procedure Code when there are serious triable allegations in the complaint. Appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers under Section 482 Cr.PC, the Supreme Court reiterated while setting aside a High Court judgment.

The court reiterated that exercise of powers under Section 482 Cr.P.C. to quash the proceedings is an exception and not a rule and the inherent jurisdiction under Section 482 Cr.P.C. though wide is to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in section itself. Appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers under Section 482 Cr.P.C.

Surajdeo Mahto vs. State of Bihar : 2021 SCC OnLine SC 542: If Last Seen Theory Is Established, Accused Should Explain Circumstances In Which He Departed Company Of Deceased -HELD- The SC bench was disposing a criminal appeal arising out of a murder case of the year 1987. The Trial Court convicted the accused duo under Section 302 read with section 34 of the Indian Penal Code and sentenced them to life imprisonment. The Patna High Court later affirmed the conviction in the year 2010.The Court reiterated that, Once the fact of last seen is established, an adverse inference can be drawn against the accused if he fails to explain the circumstances in which he departed the company of the deceased.

The Court noted that the conviction of the accused is based on circumstantial evidence regarding

(i) Last seen theory;

(ii) Motive &

(iii)false information provided and subsequent conduct of the accused.

The accused's main contention in the appeal was that the conviction, which is merely on the basis of 'last seen theory', is unsustainable.

The court observed that the last seen theory is applied where the time interval between the point of when the accused and the deceased were last seen together, and when the victim is found dead, is so small that the possibility of any other person other than the accused being the perpetrator of crime becomes impossible. Referring to recent judgment in *Satpal v. State of Haryana,(2018) 6 SCC 610*, the court observed that unless the fact of last seen is corroborated by some other evidence, the fact that the deceased was last seen in the vicinity of the accused, would by itself, only be a weak kind of evidence.

Cheminova India Limited vs. State of Punjab: 2021 SCC OnLine SC 573: Magistrate Not Required To Record Statement Of Public Servant Who Filed Complaint Before Summoning Accused-HELD- In this case, the Inspecting Officer filed complaint before the Judicial Magistrate, against a company, its managing director and others alleging offence of 'misbranding' under Sections 3(k)(i), 17, 18, 33, 29 of the Insecticides Act. The bench referred to proviso of Section 200 Cr.PC which states that while taking cognizance, Magistrate need not record statement of such public servant, who has filed the complaint in discharge of his official duties.

"With regard to the procedure contemplated under Section 202 of the Code of Criminal Procedure, the same is to be viewed, keeping in mind that the complainant is a public servant who has filed the complaint in discharge of his official duty. The legislature in its wisdom has itself placed the public servant on a different pedestal, as would be evident from a perusal of proviso to Section 200 of the Code of Criminal Procedure. Object of holding an inquiry / investigation before taking cognizance, in cases where accused resides outside the territorial jurisdiction of such Magistrate, is to ensure that innocents are not harassed unnecessarily. By virtue of proviso to Section 200 of Code of Criminal Procedure, the Magistrate, while taking cognizance, need not record statement of such public servant, who has filed the complaint in discharge of his official duty. Further, by virtue of Section 293 of Code of Criminal Procedure, report of the Government Scientific Expert is, per se, admissible in evidence. The Code of Criminal Procedure itself provides for exemption from examination of such witnesses, when the complaint is filed by a public servant." the court observed.

The Supreme Court hence observed that a Magistrate is not required to record statement of a public servant who filed the complaint in discharge of his official duty before issuing summons to the accused resides outside the territorial jurisdiction.

Nerella Chiranjeevi Arun Kumar Vs. State Of Andhra Pradesh: SLP(Crl) 3978/2021 dt 02.08.2021: Offences Committed Outside India: Previous Sanction Of Central Govt U/S 188 CrPC Not Required At The Stage Of Cognizance But Trial Can't Be Commenced Without It-HELD- In this case, the contention of the accused before the High court in his petition under Section 482 Cr.PC was that the alleged offences were committed in the USA and in accordance with Section 188 of the Cr.P.C., sanction from the Central Government is required even for initiation of investigation of the crime. The High Court, rejected this contention and dismissed the petition. In appeal, the bench noted that in T*hota Venkateswarlu vs. State of A.P. Tr. Principal Secretary 2011 (9) SCC 527* it was held that previous sanction of the Central Government under Section 188 Cr.P.C. for offences committed by a citizen of India outside the country is not required at the stage of cognizance and therefore it is not inclined to interfere with the order passed by the High Court.

While dismissing the SLP, the court clarified that the accused is at liberty to raise the ground pertaining to sanction before the commencement of the trial. The Supreme Court observed that the trial of the criminal case against an Indian citizen for offences committed outside India

cannot commence without sanction of the Central Government under Section 188 of the Code of Criminal Procedure.
But such previous sanction is not required at the stage of cognizance, the SC bench added.

N.S. Nandiesha Reddy vs. Kavitha Mahesh: 2021 SCC OnLine SC 538: Witness Cannot Be Prosecuted For Perjury U/s 193 IPC for Mere Inconsistency In His Statements-HELD- The bench led by CJI observed that the prosecution for perjury cannot be ordered if there is no intentional falsehood uttered. Mere reference to inconsistent statements alone is not sufficient to take action unless a definite finding is given that they are irreconcilable; one is opposed to the other so as to make one of them deliberately false, the court said. The Supreme Court observed that a witness cannot be prosecuted for perjury under Section 193 of the Indian Penal Code merely because he made inconsistent statements before the Court.

Shabbir Hussain vs. State of Madhya Pradesh: SLP(Crl) 7284/2017 dt 26.07.2021: Mere Harassment Will Not Amount To Abetment Of Suicide U/s 306 IPC-HELD-The SC bench observed that, in order to bring a case within Section 306 IPC, there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigating or by doing a certain act to facilitate the commission of suicide. Mere harassment would not amount to an offence of abetment of suicide under Section 306 of the Indian Penal Code, the Supreme Court reiterated.

Supreme Bhiwandi Wada Manor Infrastructure Pvt Ltd vs State of Maharashtra and another: 2021 SCC OnLine SC 507: No Need To Examine Complainant Before Ordering Investigation Under Section 156(3) Cr.PC-HELD- The Supreme Court has reiterated that there is no requirement of examining the complainant on oath under Section 200 of the Code of Criminal Procedure before a Judicial Magistrate orders police investigation under Section 156(3) Cr.PC. because he was not taking cognizance of any offence therein. Holding so, the Supreme Court set aside an order passed by the Bombay High Court which had granted anticipatory bail on the ground that order of magistrate to direct registration of FIR under Sec 156(3) Cr.PC was given without examining the complainant on oath as under Section 200 Cr.PC.The Supreme Court held that the High Court's view that procedure under Section 200 CrPC had to be followed before Section 156(3) order was erroneous in law.The Top Court referred to a line of precedents which held that Section 156(3) CrPC is a pre-cognizance stage.

The State Of Kerala vs K Ajith: 2021 SCC OnLine SC 510: 'Must Subserve Administration Of Justice': Supreme Court Formulates Principles On Withdrawal Of Prosecution Under Section 321 Cr.PC-HELD- The Supreme Court, in its judgment dismissing the plea seeking withdrawal of prosecution in assembly ruckus case, also formulated the principles on the withdrawal of a prosecution under Section 321 of the Code of Criminal Procedure.
The bench observed that while deciding a plea to withdraw prosecution, the court must be satisfied that the grant of consent sub-serves the administration of justice; and that the permission has not been sought with an ulterior purpose.
The court can also scrutinize the nature and gravity of the offence and its impact upon public life especially where matters involving public funds and the discharge of a public trust are implicated, the bench added. The following principles were formulated:

1. Section 321 entrusts the decision to withdraw from a prosecution to the public prosecutor but the consent of the court is required for a withdrawal of the prosecution;

2. The public prosecutor may withdraw from a prosecution not merely on the ground of paucity of evidence but also to further the broad ends of public justice;
3. The public prosecutor must formulate an independent opinion before seeking the consent of the court to withdraw from the prosecution;
4. While the mere fact that the initiative has come from the government will not vitiate an application for withdrawal, the court must make an effort to elicit the reasons for withdrawal so as to ensure that the public prosecutor was satisfied that the withdrawal of the prosecution is necessary for good and relevant reasons;
5. In deciding whether to grant its consent to a withdrawal, the court exercises a judicial function but it has been described to be supervisory in nature. Before deciding whether to grant its consent the court must be satisfied that: (a) The function of the public prosecutor has not been improperly exercised or that it is not an attempt to interfere with the normal course of justice for illegitimate reasons or purposes; (b) The application has been made in good faith, in the interest of public policy and justice, and not to thwart or stifle the process of law; (c) The application does not suffer from such improprieties or illegalities as would cause manifest injustice if consent were to be given; (d) The grant of consent sub-serves the administration of justice; and (e) The permission has not been sought with an ulterior purpose unconnected with the vindication of the law which the public prosecutor is duty bound to maintain;
6. While determining whether the withdrawal of the prosecution subserves the administration of justice, the court would be justified in scrutinizing the nature and gravity of the offence and its impact upon public life especially where matters involving public funds and the discharge of a public trust are implicated; and

In a situation where both the trial judge and the revisional court have concurred in granting or refusing consent, this Court while exercising its jurisdiction under Article 136 of the Constitution would exercise caution before disturbing concurrent findings. The Court may in exercise of the well-settled principles attached to the exercise of this jurisdiction, interfere in a case where there has been a failure of the trial judge or of the High Court to apply the correct principles in deciding whether to grant or withhold consent.

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

LATEST CASES: ARBITRATION AND CONCILIATION ACT

"*The Press in India has greatly contributed to the strengthening of democracy in the country. It will have a pivotal role to play for the continued existence of a vibrant democracy in the country. The reach of the Press out of which the visual media in particular wields power, appears to be limitless. No segment of the population is impervious to its influence. Media's consumers are entitled to demand that the stream of information that flows from it, must remain unpolluted by considerations other than truth."*

— K.M. Joseph, J. in Yashwant Sinha v. CBI, (2019) 6 SCC 1, paras 16 and 17.

Amazon.com NV Investment Holdings LLC vs. Future Retail Limited : 2021 SCC OnLine SC 557 -Section 37 Arbitration Act A Complete Code; Order Under Sec 17(2) Enforcing Emergency Arbitrator's Award Not Appealable Under Sec.37-HELD-The Supreme Court has held that an order of enforcement of an Emergency Arbitrator's order made under Section 17(2) of the Arbitration and Conciliation Act is not appealable under Section 37 of the Act.

Two issues were considered in the appeal:

(1)whether an "award" delivered by an Emergency Arbitrator under the Arbitration Rules of the Singapore International Arbitration Centre ["SIAC Rules"] can be said to be an order under Section 17(1) of the Arbitration Act; and

(2)whether an order passed under Section 17(2) of the Arbitration Act in enforcement of 1 the award of an Emergency Arbitrator by a learned Single Judge of the High Court is appealable.

The bench, answering the first issue, held that full party autonomy is given by the Arbitration Act to have a dispute decided in accordance with institutional rules which can include Emergency Arbitrators delivering interim orders, described as "awards" and therefore such orders are referable to and are made under Section 17(1) of the Arbitration Act.

To answer the second question, the bench noticed that Section 37 is a complete code so far as appeals from orders and awards made under the Arbitration Act are concerned. It noted that even after the amendment, Section 37 continued to provide appeals only from an order granting or refusing to grant any interim measure under Section 17. It also noted that no corresponding amendment was made to Section 37(2)(b) to include within its scope the amended Section 17.

Answering these contentions the bench observed that *"There can be no doubt that granting or refusing to grant any interim measure under Section 17 would only refer to the grant or non-grant of interim measures under Section 17(1)(i) and 17(1) (ii). In fact, the opening words of Section 17(2), namely, "subject to any orders passed in appeal under Section 37…" also demonstrates the legislature's understanding that orders that are passed in an appeal under Section 37*

are relatable only to Section 17(1). For example, an appeal against an order refusing an injunction may be allowed, in which case subsection (2) of Section 17 then kicks in to enforce the order passed in appeal. Also, the legislature made no amendment to the granting or refusing to grant any measure under Section 9 to bring it in line with Order XLIII, Rule 1(r), under Section 37(1)(b). What is clear from this is that enforcement proceedings are not covered by the appeal provision." the bench observed.

Amazon.com NV Investment Holdings LLC vs. Future Retail Limited : 2021 SCC OnLine SC 557 - Emergency Arbitration Award Enforceable In Indian Law -HELD- The Supreme Court ruled in favour of e-commerce giant Amazon in its dispute with Future Retail Limited(FRL) over the latter's merger deal with Reliance group. The top court held that that Emergency Award passed by Singapore arbitrator stalling FRL-Reliance deal is enforceable in Indian law.

The Court held that an award/order by an Emergency Arbitrator would be covered by Section 17 of the Arbitration and Conciliation Act and it can be enforced under the provisions of Section 17(2). It also held that no appeal lies under Section 37 of the Arbitration Act against an order of enforcement of an Emergency Arbitrator's order made under Section 17(2) of the Act.

PSA Sical Terminals Pvt. Ltd. vs. Board Of Trustees Of V.O. Chidambranar Port Trust Tuticorin: 2021 SCC OnLine SC 508- Arbitration Award Which Ignores Vital Evidence Or Rewrites The Contract Is Liable To Be Set Aside-HELD- The Supreme Court observed that an arbitration award which ignores vital evidence in arriving at its decision or rewrites a contract is liable to be set aside under Section 34 of the Arbitration and Conciliation Act on the ground of patent illegality.

The Supreme Court bench observed that a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse. Rewriting a contract for the parties would be breach of fundamental principles of justice, the court said.

Gemini Bay Transcription Pvt. Ltd. vs. Integrated Sales Service Ltd.: 2021 SCC OnLine SC 508- Foreign Award Can Be Binding On Non-Signatories To Arbitration Agreement -HELD- The Supreme Court has held that a foreign award can be binding on non-signatories to the arbitration agreement and can be thus enforced against them.

In this regard, the Court referred to Section 46 of the Arbitration and Conciliation Act, which deals with the circumstances under which a foreign award is binding. The Court noted that the provision speaks of "persons as between whom it was made" and not parties to the agreement. "Persons" can include non-signatories to the agreement.

"First and foremost, Section 46 does not speak of "parties" at all, but of "persons" who may, therefore, be non-signatories to the arbitration agreement", the Court said in its judgment in the case Gemini Bay Transcription Pvt. Ltd. vs. Integrated Sales Service Ltd.

Sital Dass Jewellers v. Asian Hotels (North) Ltd.: 2021 SCC OnLine Del 3914- Can a party unilaterally appoint

an Arbitrator of their choice? -HELD- The Delhi High Court reiterated that no party could be permitted to unilaterally appoint an Arbitrator, as the same would defeat the purpose of unbiased adjudication of the dispute between the parties.

Crux of the petitions is to seek the appointment of Arbitrators for adjudication of disputes between the parties. Adding to the above, Court stated that the fee of the arbitrator shall be governed by the fourth schedule of the Arbitration and Conciliation Act, 1996 and the Arbitrator shall ensure compliance with Section 12 of Arbitration and Conciliation Act, 1996 before commencing the arbitration.

MZ Corporate (P) Ltd. v. MSD Telematics (P) Ltd., 2021 SCC OnLine Del 3016- Does non-payment of stamp duty on a commercial contract invalidates arbitration agreement? Explained-HELD- The Delhi High Court decides a matter covering various aspects of the arbitration agreement.

Instant petition under Section 11 of the Arbitration and Conciliation Act sought appointment of a Sole Arbitrator. High Court while analyzing the matter stated that in exercising jurisdiction under Section 11, Court needs to only examine if there is an existence of the arbitration agreement and whether there is the existence of arbitral disputes.

Supreme Court in the decision of *Vidya Drolia v. Durga Trading Corporation*, (2021) 2 SCC 1, observed that "the rule for the Court is 'when in doubt, do refer".

Therefore, it was noted that only in cases when ex-facie, the document appeared to be fabricated, that the Court would make a judicial enquiry. Mere allegation of fraud is not enough.

Bench stated that the purported veracity of the document in the present case, though disputed by MSD, was not sufficient to hold that the document is fraudulent, or that the Court should not proceed to appoint an Arbitrator. Thus, Court opined that the plea of agreement being unstamped wouldn't prevent the Court in appointing an arbitrator while exercising jurisdiction under Section 11 of the Act.

IMZ established that the contingencies provided under Section 11(6) of the Act were satisfactorily made out. Hence the present petition was allowed. Shashank Garg, Advocate was appointed as the Sole Arbitrator to adjudicate the disputes that arose between the parties under the MoU.

Mahima Tuli
Research Fellow

EVENTS

- A group of 23 newly selected PCS (JB -- M - 06, F - 17) joined the judicial service. One year Induction Training Programme Online commenced on August 2, 2021. The inaugural function was organized in the morning of August 2, 2021. Hon'ble Mr. Justice G.S.Sandhawalia, President, BoG, CJA delivered the inaugural address in the presence of Dr.Balram K Gupta, Director (Academics) and Ms.Shalini Singh Nagpal, Director (Administration). The Hon'ble President urged the young judicial officers to be prepared to live a disciplined life. The foundation training to be taken seriously in order to learn the tools of judicial and judicious decision making. They must cultivate and nurture different elements of judicial culture. Ms.Shalini Singh Nagpal told the judicial officers the basic rules they were required to follow.

- Sh.B.M.Lal, Faculty Member, CJA gave a Webinar on "Ground of non-payment of Rent under Punjab Rent Act, 1995" on August 7, 2021 to the District Judiciary of Punjab, Haryana and UT Chandigarh.

- Sh.H.S.Bhangoo, Faculty Member, CJA gave a Webinar on "Bail: Revisiting the Law" on August 14, 2021 to the District Judiciary of Punjab, Haryana and UT Chandigarh.

- Sh.Pramod Goyal, Member Secretary, Haryana State Legal Services Authority gave a Webinar on "Fair Trial in the era of Virtual Courts" on August 21, 2021 to the District Judiciary of Punjab, Haryana and UT Chandigarh.