

# Ads Spirits Pvt. Ltd vs Shubhom Juneja on 4 May, 2023

**Author: C.Hari Shankar**

**Bench: C.Hari Shankar**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(COMM) 277/2023, CAV 229/2023, I.A. 8682/2023, I.A. 8683/2023, I.A. 8684/2023 & I.A. 8685/2023

ADS SPIRITS PVT. LTD.

..... Plaintiff

Through: Mr. Ajay Sahni and Mr. Chirag Ahluwalia, Advs.

versus

SHUBHOM JUNEJA

..... Defendant

Through: Ms. Payal Jain and Mr. Sumit Kumar, Advs.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR  
ORDER

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04.05.2023

CS(COMM) 277/2023

1. The plaintiff ADS Spirits Pvt. Ltd. alleges that, by using the mark Royal Queen for whisky and adopting a trade dress which is nearly identical to the trade dress of the plaintiff, the defendant has committed the torts of infringement and passing off.
2. The defendant is on caveat. I have heard Mr. Sahni, learned Counsel for the plaintiff and Ms. Payal Jain, learned Counsel for the defendant at some length.
3. The plaintiff is the proprietor of the following registered trademarks:

S. Application Registration Trademark Class Goods No No. Date

1. 2728522 30th April 2014 ROYAL 33 All kinds of GREEN alcoholic beverages, wines & spirits Signing Date:08.05.2023 12:13:44 including whisky, wine, vodka, spirits, rum, liquor, gin, brandy, country liquor

2. 3466602 27th January 33 Alcoholic 2017 beverages including whisky

3. 3494510 28th February 32 Packaged 2017 water including mineral water and aerated water

4. 3786325 23rd March ROYAL 41 Entertainme-

		2018	GREEN	nt ; sporting and cultural activities
5.	3786326	23rd March 2018	ROYAL GREEN	Apparatus for recording, transmission or Reproduction of sound or images; magnetic data carriers, recording discs; compact discs; DVDs and Other digital recording media.

6.	4471600	13th March 2020	33	Alcoholic beverages (except beers)
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4. The plaintiff manufactures and sells whisky under the name "Royal Green". In September to October 2014, the plaintiff claims to have introduced a distinctive packaging and trade dress for its Royal Green Whisky, which was slightly modified in 2019. The trade dress as adopted in September to October 2014 and as thereafter modified in 2019 are as under:

5. At this juncture, Ms. Payal Jain, learned Counsel for the defendant intervenes to state that her client also holds a registration for the impugned "Royal Queen" mark since 2018. This contention, as advanced by Ms. Jain, is neither entirely correct nor entirely relevant.

6. It is candidly acknowledged in para 30 of the plaint that the defendant holds a registration for the "ROYAL QUEEN" device mark with effect from 27th June 2018. Ms Jain does not seek to contend that the defendant holds a registration for any other mark. We are not concerned, in the present case, with the said device mark. Ergo, Ms. Jain's reference to the registration held by the defendant, in respect of the mark with effect from 2018 cannot impact the outcome of this case one way or the other.

7. Reverting to the facts, the plaintiff asserts that, within a short period of time, since its launch in 2014, the plaintiff's Royal Green Whisky has become a preferred brand and was an official entry to the Millionaire's Club which is a prestigious annual list of spirit brands around the world, in 2020. The plaintiff asserts that the sales of the plaintiff's Royal Green Whisky has exponentially increased from 2015 on a year wise basis, to the extent that the sales of 9 litre bottles of Royal Green Whisky in 2014-15, which was 32,000, rose to 2750000 bottles by 2022-2023. Mr. Sahni submits that the revenue earned from the sales of 9 litre bottles of its Royal Green Whisky, by the plaintiff, till date is in excess of 1,800 crores.

8. The plaintiff alleges that the defendant was earlier selling its Royal Queen product in Punjab in a packaging which was completely dissimilar to that of the plaintiff but has, recently, introduced, for sales in Delhi, a trade dress which is nearly identical to the plaintiff's. This similarity extends, according to the plaint, not only to the outer packaging of the defendant's product but also to the bottles itself.

Para 31 of the plaint provides a comparative tabular depiction thus:

Current trade dress/packaging Impugned trade dress of defendant as used in Punjab defendant introduced for Delhi sales

9. Physical samples of the bottles, in their respective packs, have also been produced in the Court, and have been seen by me. Prima facie, it is apparent that the present trade dress of the defendant is nearly identical to the trade dress of the plaintiff, to the extent that a similar colour combination is used, the placement of the name of the product is also similar, and the bottles, too, are similar in shape and colour.

10. A comparison of the rival packing and of the rival bottles may be provided thus:

Defendant's Packing Plaintiff's Packing

11. A customer of average intelligence and imperfect recollection, who comes across the plaintiff's Royal Green Whisky, whether in packed or unpacked condition, on a particular date and, a few days later, comes across the defendant's Royal Queen product is, *prima facie*, in my view likely, to be confused between the two.

12. The likelihood of confusion stands exacerbated by the phonetic similarity between the names Royal Queen and Royal Green. Even the lettering in which the names of the products figure on the bottles and the outer packaging of the plaintiff's and the defendant's products are similar, and a similar green font is used.

13. That the defendant has consciously sought to mitigate the plaintiff is, *prima facie*, apparent from the fact that, earlier, the defendant was adopting a trade dress for its Royal Queen Whisky which was completely dissimilar to that of the plaintiff. At this stage, therefore, this Court is, *prima facie*, convinced that the plaintiff has deliberately adopted a trade dress which is deceptively similar to that of the plaintiff, so as to create confusion in the market.

14. The two rival marks are deceptively similar. They are used for the same product, i.e. whisky. The trade dress in which the plaintiff's and defendant's products are sold are nearly identical. The products are available at the same outlets, i.e. liquor vends. They cater to the same category of consumers - those who imbibe alcoholic beverages.

Thus, the triple test which applies in such cases and is often used to decide whether a *prima facie* case of infringement exists or not, is also satisfied.

15. Ms. Jain, learned Counsel for the defendant has sought to contend that the green colour, as well as the suffix "Royal" are common to the trade in alcoholic liquors.

16. There are three reasons why this plea cannot help Ms Jain.

17. Firstly, once the Court finds, *prima facie*, that the mark of the defendant is deceptively similar to that of the plaintiff, and that the trade dress of the defendant's product also imitates that of the plaintiff's product, the issue of whether the suffix "Royal" is, or is not, common to the trade, ceases to be of any considerable significance, as infringement already stands established, *prima facie*.

18. Secondly, the plaintiff is not alleging infringement on the ground of commonality of the "Royal" suffix between the marks of the plaintiff and the defendant, or on the ground that both bottles are green in colour. As I have observed, the overall colour scheme of the bottles and the outer packings, as well as the arrangement of the text and graphics on the outer packings, are deceptively similar.

19. Thirdly, a plea of the marks being common to the trade cannot be taken in such a fashion. The standard at which such a plea has to be raised stands thus encapsulated in the judgment of a Division Bench of this Court in Pankaj Goel v. Dabur India 1:

"21. As far as the Appellant's argument that the word MOLA is common to the trade and that variants of MOLA are available in the market, we find that the Appellant has not been able to *prima facie* prove that the said 'infringers' had significant business turnover or they posed a threat to Plaintiff's distinctiveness. In fact, we are of the view that the Respondent/Plaintiff is not expected to sue all small type infringers who may not be affecting Respondent/Plaintiff business. The Supreme Court in National Digitally Signed (2008) 38 PTC 49 (DB) Signing Date:08.05.2023 12:13:44 Bell v. Metal Goods 2, has held that a proprietor of a trademark need not take action against infringement which do not cause prejudice to its distinctiveness. In Express Bottlers Services Pvt. Ltd. v. Pepsi Inc. 3, it has been held as under:-

"....To establish the plea of common use, the use by other persons should be shown to be substantial. In the present case, there is no evidence regarding the extent of the trade carried on by the alleged infringers or their respective position in the trade. If the proprietor of the mark is expected to pursue each and every insignificant infringer to save his mark, the business will come to a standstill. Because there may be occasion when the malicious persons, just to harass the proprietor may use his mark by way of pinpricks.... The mere use of the name is irrelevant because a registered proprietor is not expected to go on filing suits or proceedings against infringers who are of no consequence... Mere delay in taking action against the infringers is not sufficient to hold that the registered proprietor has lost the mark intentionally unless it is positively proved that delay was due to intentional abandonment of the right over the registered mark. This Court is inclined to accept the submissions of the respondent No. 1 on this point... The respondent No. 1 did not lose its mark by not proceeding against insignificant infringers..."

22. In fact, in Dr. Reddy Laboratories v. Reddy Pharmaceuticals 4, a Single Judge of this Court has held as under:-

"...the owners of trade marks or copy rights are not expected to run after every infringer and thereby remain involved in litigation at the cost of their business time. If the impugned infringement is too trivial or insignificant and is not capable of harming their business interests, they may overlook and ignore petty violations till they assume alarming proportions. If a road side Dhaba puts up a board of "Taj Hotel", the owners of Taj Group are not expected to swing into action and raise objections forthwith. They can wait till the time the user of their name starts harming their business interest and starts misleading and confusing their customers."

(Emphasis supplied) (1970) 3 SCC 665 (1989) 7 PTC 14 Digitally Signed (2004) 29 PTC 435 Signing Date:08.05.2023 12:13:44

20. The issue of whether the plaintiff's trade dress is common to the trade is, therefore, essentially a matter of trial. Even otherwise, I am satisfied, *prima facie*, that the individual marks Royal Queen and Royal Green, when used for identical products, and when used on packings which are as similar

as those which are before the Court in the present case, are undoubtedly likely to result in confusion in the mind of the consumer.

21. Ms. Jain has also clarified that the defendant applied only in June 2022 for excise clearance to clear and sell goods using the impugned trade dress. She submits that sales of the product can be effected only after such clearance is obtained. It is not, therefore, as though the defendant has been selling the products bearing the impugned trade dress since long, so as to inhibit the Court from granting an injunction at this stage.

22. Where a prima facie case of infringement and passing off is made out, the Supreme Court, in para 14 of Laxmikant V. Patel v. Chetanbai Shah<sup>5</sup> and in para 5 of Midas Hygiene Industries P. Ltd. v. Sudhir Bhatia<sup>6</sup>, clearly holds that the Court has necessarily to injunct further release, manufacture and sale of the infringing.

23. In the aforesaid facts and circumstances, let the plaint be registered as a suit.

24. Issue summons.

25. Summons are accepted on behalf of defendant by Ms. Payal 2002 3 SCC 65 Digitally Signed (2004) 3 SCC 90 Signing Date:08.05.2023 12:13:44 Jain.

26. Written statement, accompanied by affidavit of admission/denial of the documents filed by the plaintiff be filed within 30 days with advance copy to learned Counsel for the plaintiff who may file replication thereto, accompanied by affidavit of admission/denial of the documents filed by the defendant within 30 days thereof.

27. List before the learned Joint Registrar (Judicial) for completion of pleadings, admission and denial of the documents and marking of exhibits on 5th July 2023, whereafter the matter would be placed before the Court for case management hearing and further proceedings.

I.A. 8682/2023 (under Section 12A of the Commercial Courts Act, 2015)

28. In view of the judgment of the Division Bench of this Court in Chandra Kishore Chaurasia v. R.A. Perfumery Works Pvt Ltd<sup>7</sup>, exemption is granted from the requirement of pre-institution mediation under Section 12A of the Commercial Courts Act, 2015.

29. The application stands allowed accordingly.

I.A. 8683/2023 (under Order XXXIX Rules 1 and 2 of the CPC)

30. This is an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure Code, 1908 (CPC) seeking interlocutory injunctive reliefs. The facts as stated hereinabove make out a prima facie case of infringement as well as passing off. As such, the plaintiff 2022 SCC OnLine Del 3529 Signing Date:08.05.2023 12:13:44 is entitled to interlocutory ad interim injunction.

31. Issue notice in the application. Notice is accepted by Ms. Payal Jain.
  32. Reply, if any, be filed within four weeks with advance copy to learned Counsel for the plaintiff who may file rejoinder thereto within four weeks thereof.
  33. List before the Court on 27th July 2023.
  34. For the reasons aforesaid, till the next date of hearing, the defendant, as well as its proprietors, partners and all others acting on its behalf shall stand restrained from advertising, manufacturing, offering for sale, selling or dealing in any manner with alcoholic beverages using the mark ROYAL QUEEN and/or the packaging/trade dress shown in para 10 supra, or any other mark or trade dress which is deceptively similar to the registered trademark and trade dress of the plaintiff.
  35. This Court is not interdicting products which have already entered the market. However, defendant shall restrained from manufacturing or clearing or releasing into the market any further products bearing the impugned mark Royal Queen, in the impugned trade dress or any other trade dress which is deceptively similar to the trade dress adopted by the plaintiff. In order to avoid any confusion on this core, it is clarified that the defendant is not, for the present, injunctioned from using the trade dress
  36. In its written statement, the defendant shall also disclose the existing stock of whisky bearing the mark Royal Queen using the impugned trade dress which is presently in stock with it.
  37. Caveat stands discharged.
- I.A. 8684/2023 (under Order XI Rule 1(4) of the CPC)
38. By this application, the plaintiff seeks permission to file additional documents.
  39. The plaintiff is permitted to place additional documents on record in accordance with Order XI Rule 1(4) of the Code of Civil Procedure, 1908 (CPC) as amended by the Commercial Courts Act within 30 days from today.
  40. The application stands disposed of accordingly.
- I.A. 8685/2023 (under Section 151 of the CPC)
41. Subject to the plaintiff filing legible copies of any dim or illegible documents on which it may seek to place reliance within four weeks from today, exemption is granted for the present.
  42. The application is disposed of C.HARI SHANKAR, J MAY 4, 2023/ar

# **Laws Relating to Women**

## **Booklet**

**'Gender Sensitization and Legal Awareness Programme in collaboration with  
Education Boards for Class XI and XII across India'**



**NATIONAL COMMISSION FOR WOMEN**

**NEW DELHI**

**July 2020**

## PREFACE

The National Commission for Women was set up as statutory body in January 1992 under the National Commission for Women Act, 1990 with a mandate to safeguard the constitutional rights of women. In keeping with its mandate, the Commission has, from time to time taken various initiatives for gender awareness and sensitization in the society regarding rights of women. It has been experienced that gender-based discriminations exists in all walks of life and every part of society, including everyday interactions at the workplace and public space.

The Commission believes that introducing Gender Sensitization and Legal Awareness Programme at school level would facilitate inculcating values of equality, inclusivity and diversity, which are essential for building a healthy society among the adolescent boys and girls. Moreover, knowledge of laws relating to women and gender sensitization is not only crucial for balanced development of young minds; it will also help students in building correct values, self-discipline and national spirit.

The National Commission for Women in collaboration with Education Boards is launching a PAN India programme for running Gender Sensitization and Legal Awareness Programme with the target group of students of Class XI and XII.

In accordance with the Scheme, Commission decided to prepare a booklet on Major Laws relating to women. Accordingly the Commission constituted an Expert Committee, having expertise in the field of law, comprising of the following experts:-

1. Dr. Kiran Gupta, Professor, Faculty of Law, University of Delhi, New Delhi
2. Dr. Ritu Sharma, Associate Prof. National Law University, New Delhi
3. Dr. Ellina Samantroy, V. V. Giri National Labor Institute, Noida

The Committee has prepared material on major laws relating to women, so as to generate appropriate understanding and awareness of major laws among students of class 11th and 12th with the aim to sensitize them towards rights of women and awareness about issues impacting men and women.

This booklet is based on the material prepared by the Committee. NCW places its appreciation on record for the efforts of the Committee Members presenting the complex subject in a simplified manner.

The Commission is hopeful that the students would find this material useful and interesting. This simple literature on gender issues is expected to ignite young minds to think objectively and rationally to help us to move towards a gender balanced society.

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## CHAPTER -1

### WOMEN AND THE INDIAN CONSTITUTION

**1.1.** The Constitution of India in its Preamble envisages a “sovereign, socialist, secular, democratic republic” which secures all its citizens “justice”, “liberty”, “equality” and promotes “fraternity” among them.

**1.2.** The main privileges granted to women by Constitution of India are as follows:

- **Equality before law**

Article 14 embodies the general principles of equality before law and equal protection of laws.

**PROBLEM**

*There were two vacancies for the same post in a government office. Kanika and Sanjay both applied for the same job. Both of them were selected .The head of the department asked Kanika that they will pay her Rs. 20,000/- and Rs. 25,000/- to Sanjay because Kanika being a female cannot work as much as Sanjay can do.*

**SOLUTION**

*In such a situation Kanika can go to the Court and can ask the Court to protect her Fundamental Right to equality by filing a writ petition under Article 226 in the High Court or under Article 32 in the Supreme Court.*

- **Prohibition from discrimination on grounds of religion, race, caste, sex or place of birth:**

**Article 15(1) and (2)** prohibits the state from discriminating against any citizen only on the basis of any one or more of the aspects such as religion, race, caste, sex, place of birth or any of them.

**Article 15(3)** makes it possible for the state to create special provisions for protecting the interests of women and children.

**Article 15(4)** capacitates the State to create special **arrangements** for promoting interests and welfare of socially and educationally backward classes of society.

**PROBLEM**

*Manish belongs to the Schedule Caste. He applied for the admission in a Government Law College. The clerk is a biased person who destroyed his form so that Manish won't be eligible to take admission in the College.*

**SOLUTION**

*Manish complained about the act of the Clerk to National Commission for Scheduled Castes. The Commission further filed a case in the Supreme Court under Article 32 of the Constitution. The act of the clerk was held to be illegal, unconstitutional and violative of Article 15 of the Constitution.*

- **Equality of opportunity:** Article 16 provides for equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.
- **Article 39** requires the State to direct its policy towards securing for men and women equally the **right to an adequate means of livelihood** [Article 39(a)], and **equal pay for equal work** for both men and women [Article 39(d)]
- **Article 39A** directs the State to promote justice, on the basis of equal opportunity and to promote **free legal aid** by suitable legislation or scheme or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.
- **Article 42** directs the State to make provision for securing justice and humane conditions of work and for **maternity relief**.
- **Fundamental Duty:** Article 51A (e) enjoins upon every citizen the duty to renounce practices derogatory to the dignity of women.

*Sheela gave birth to a child on 1<sup>st</sup> May 2000. Her employer Mahesh gave her leave with full pay from 19<sup>th</sup> May, 2000 to 1<sup>st</sup> August, 2000. If Mahesh had cut Sheela's pay for the period that she stayed away from work, he would have been punished and fined under the Maternity Benefits Act, 1961.(Special Legislation under Article 42)*

- **Reservation of seats for Women in Panchayats and Municipalities:** Article 243 D (3) and Article 243 T(3) provide for reservation of not less than one third of total number of seats in Panchayats and Municipalities for women to be allotted by rotation to different Constituencies. Article 243 D(4) and Article 243 T(4) provides that not less than one third of the total number of officers of chairperson in the Panchayat and Municipalities at each level to be reserved for women.

## CHAPTER-2

### CRIMINAL LAW AND WOMEN

#### **2.1. CRIMES IDENTIFIED UNDER THE INDIAN PENAL CODE (IPC)**

- i. Obscenity and Indecent Representation (Sections 292, 293 & 294)
- ii. Dowry Death (Sections 304-B)
- iii. Acid Attack (Sections 326-A & 326-B)
- iv. Sexual Harassment and Outraging the modesty of women (Sections 354, 354A, 354B, 354C, 354D & 509)
- v. Rape and Sexual Assault (Section 376)
- vi. Cruelty (Section 498-A)
- vii. Domestic Violence
- viii. Trafficking of Women
- ix. Honour Killing
- x. Protection of Children from Sexual Offences Act 2012
- xi. Protection of Women from Sexual Harassment at Workplace Act, 2013

#### **2.2. OBSCENITY AND INDECENT REPRESENTATION**

- **Section 292(IPC) Sale, etc., of obscene books, etc,-** (1) A book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prurient interest.
- (2) Whoever sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation or advertises or makes known by any means or offers or attempts to do any which is an offence under this section, shall be punished on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees.
- **Section 294. Obscene acts and songs-** Whoever to the annoyance of others does any obscene act in public place, sings, recites or utters any obscene song, ballad or words in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months or with fine or both.

### **2.2.1. INDECENT REPRESENTATION OF WOMEN (PROHIBITION) ACT, 1987**

- Under the Indecent Representation of Women (Prohibition) Act, 1987, if an individual harasses another with books, photographs, paintings, films, pamphlets, packages, etc. containing the “indecent representation of women”, he/she is liable for a minimum sentence of 2 years.
- As per Section 6: “Any person who contravenes the provisions of section 3 and section 4 of the Act shall be punishable on the first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees, and in the event of a second or subsequent conviction with imprisonment for term of not less than six months but which may extend to five years and also with a fine not less than ten thousand rupees but which may extend to rupees one lakh.”
- Section 7 (offenses by Companies) further states that companies where any kind of “indecent representation of women”(such as the display of pornography takes place in the premises shall be deemed guilty of offence and shall be liable to be proceeded against and punished accordingly.
- **Procedure For Remedy-**
  - ✓ Complaint in the nearest police station.

### **2.3. DOWRY DEATH**

*Megha got married to Vijaya on 5<sup>th</sup> of March. It was an arranged marriage. On 20<sup>th</sup> March i.e. exactly after 15 days of her marriage, she came to her parents' house and started crying. When her parents asked her about the matters, she told them that her husband and in-laws were demanding for a new brand Santro car and on her refusal to their demand of dowry, her in-laws forcibly expelled her out of her matrimonial house and asked her to return only when her parents buy a car for Vijay. It is an illegal demand of dowry.*

- “Dowry” as defined under Section 2 of the Dowry Prohibition Act, 1961 means any property or valuable security given or agreed to be given either directly or indirectly by one party to the other at or before or at any time after marriage. Demand for cash, gold, car or any other type of property is dowry. Giving, taking or demanding or even advertising for dowry is an offence.

- **Dowry Death and Procedural Laws:**

- **Section 174** of the Code of Criminal Procedure, 1973 is amended to secure medical examination in case of suicide or death of woman within seven years of her marriage.
- **Section 113-A** has been introduced in the Evidence Act, 1872. It states that if the wife commits suicide within a period of seven years of her marriage, it will be presumed that she had been subjected to cruelty by her husband and his relatives as per sec.498-A, IPC.

*Radha is 16 years old class XI student. She was sitting quietly in the classroom and was looking very depressed. After the class her teacher asked her if there is any problem with her. She told her teacher that her sister Sudha got married to Piyush three years back and on the day of marriage Sudha's in-laws demanded for 15 tolas of gold and 3 lakh rupees in cash. Since then they had been continuously demanding dowry. Radha also mentioned that her father is the only bread earner in her family and they are four brother and sisters, Sudha being the eldest one among them. Her father was never in the position to fulfill their demand of dowry. Three days back in the morning, Radha's father got a call from Sudha's in-laws that while working in the kitchen, Sudha got fatal burn injuries and consequently she died. Radha's teacher told her that it may be a case of dowry death.*

- An offence called 'dowry death' has been created by introducing section 304B in the Indian Penal Code.
  - a) Death of a women caused by any burns or bodily injury;
  - b) Does not occur under normal circumstances;
  - c) Within seven years of her marriage;
  - d) Soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband;
  - e) In connection with any demand for dowry.
- Punishment is of at least 7 years which may even extend to life imprisonment.
- **Procedure For Remedy:**
  - ✓ Complaint at the nearest police station;
  - ✓ Complaint within ten years of marriage;
  - ✓ All dowry related crimes except dowry deaths and burning of the bride will be tried by Family Courts.

## 2.4. ACID ATTACKS

- **Section 326** of the Indian Penal Code was amended on 2<sup>nd</sup> April, 2013 with the passing of the Criminal Laws (Amendment) Act, 2013. The amendment resulted in insertion of sections 326-A and 326-B for specifically dealing with acid violence.
- **Section 326-A:** Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine.

Provided that such fine shall be just and reasonable to meet the medical expenses of the treatment of the victim. Provided further that any fine imposed under this section shall be paid to the victim.

- **Section 326-B:** Whoever throws or attempts to throw acid on any person or attempts to administer acid to any person, or attempts to use any other means, with the intention of causing permanent or partial damage or deformity of burns or maiming or disfigurement or disability or grievous hurt to that person, shall be punished with imprisonment of either description for a term which shall not be less than five years, but which may extend to seven years and also be liable to fine.
- **Compensation for acid attack:** Section 357-B has been newly inserted in Cr.P.C, which reads as follows:

“The Compensation payable by the State Government under section 357-A shall be in addition to the payment of fine to the victim under section 326-A or section 376-D of the Indian Penal Code.”

- **Compensation for Women Victims/Survivors of Sexual Assault/Other Crimes - 2018**  
National Legal Services Authority (NALSA) has formulated a compensation scheme detailed below:

S.no.	Particulars of loss or injury	Minimum Limit of Compensation	Maximum Limit of Compensation
1.	Gang Rape	Rs. 5 lakh	Rs. 10 lakh
2.	Rape	Rs. 4 lakh	Rs. 7 lakh
3.	Grievous physical injury or mental injury requiring rehabilitation	Rs. 1 lakh	Rs. 2 lakh
4.	Victims of acid attack		
(a)	In case of disfigurement of face	Rs. 7 lakh	Rs. 8 lakh
(b)	In case of injury more than 50%	Rs. 5 lakh	Rs. 8 lakh
(c)	In case of injury less than 50%	Rs. 3 lakh	Rs. 5 lakh
(d)	In case of injury less than 20%	Rs. 3 lakh	Rs. 4 lakh

Supreme Court has clarified that the said scheme is to be used as guidelines by Special Courts in awarding compensation to minor victims of sexual abuse till Central Government prepares rules.

- **Who can make an application to Legal Services Authorities for Compensation?**
  - i. Victim
  - ii. Her Dependents
  - iii. SHO of the area
- **Free Medical Treatment:** Section 357-C states that all hospitals (public or private), are required to provide first aid or medical treatment to the victim free of cost.
- **Procedure for Remedy:**
  - ✓ File a complaint immediately with the nearest police station about the acid attack upon a woman.
  - ✓ The rest of the procedure shall be carried out in accordance with law.

## **2.5. SEXUAL HARASSMENT AND OUTRAGING THE MODESTY OF A WOMEN**

**2.5.1. Modesty in section 354 IPC** is an attribute associated with women. The act of using force on a woman (such as removing her clothes) with intent to assault her sexually is considered to be an act of outraging her modesty. Assaulting a women or using criminal force on her with the intention of outraging her modesty- It implies that the assault must be on a women and that the accused must have used criminal force on her intending to outrage her modesty. The punishment is of at least one year which may extend to five years.

### **2.5.2. Section 354A- Sexual Harassment:**

- (1) The following acts or behavior shall constitute the offence of sexual harassment:
  - i. Any physical contact and advances involving unwelcome and explicit sexual overtures; or
  - ii. a demand or request for sexual favours; or
  - iii. making sexually coloured remarks; or
  - iv. forcibly showing pornography; or
  - v. any other unwelcome physical, verbal or non-verbal conduct of sexual nature.
- (2) Any man who commits the offence specified in clause (i) or clause (ii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to five years, or with fine or with both.
- (3) Any person who commits the offence in clause (iii) or (iv) or (v) of sub-section (1) shall be punishable with imprisonment of either description that may extend to one year or with fine or both.

### **2.5.3. Section 354 B- Assault or use of criminal force to woman with intent to disrobe.**

Any man who assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.

### **2.5.4. Section 354C.- Voyeurism**

Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with

imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

Explanation I. — For the purpose of this section, "private act" includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim's genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public.

Explanation 2. — Where the victim consents to the capture of the images or any act, but not to their dissemination to third persons and where such image or act is disseminated, such dissemination shall be considered an offence under this section.

#### **2.5.5. Section 354D.- Stalking**

- (1) Any man who—
  - i. follows a woman and contacts, or attempts, to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or
  - ii. monitors the use by a woman of the internet, email or any other form of electronic communication;
  - iii. or watches or spies on a person in a manner that results in a fear of violence or serious alarm or distress in the mind of such person, or interferes with the mental peace of such person commits the offence of stalking.
- (2) Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

**2.5.6. Section 509** criminalizes uttering of any word or sound or gesture or exhibiting any object to a woman with the intention that she sees or hears it or it intrudes her privacy with the intention of insulting her modesty.

*Seema went to a boutique to purchase a dress for herself. She went to the trial room of the boutique to try the dress she had selected. There was a hidden camera fixed in the trial room. Few days later, Seema was shocked to find her naked photo on the front page of a magazine. It is case of Voyeurism and punishable under Section 354 C of IPC.*

- **Procedure for Remedy:**

- ✓ File a complaint immediately with the nearest police station.
- ✓ The rest of the procedure shall be carried out in accordance with law.

## 2.6. RAPE AND SEXUAL ASSAULT

- Sexual assault involves a perpetrator physically forcing a sexual act on a woman. Rape falls under sexual assault and includes acts like penetration of a penis, any object or any part of the body to any extent, into the vagina, mouth, urethra or anus of woman; or making another person do so. Rape is a heinous crime but a woman/girl does not want to report it to the police, because she feels:
  - People will question her character and will hold her responsible for what has happened
  - Her family will get a bad name and nobody will believe her story
- The absence of consent is enough to constitute a crime of rape. Consent has been clearly defined as a clear, voluntary communication that the woman agrees to the specific sexual act, leaving no room for debate. Things like a girl's character or her previous sexual history are irrelevant while deciding a case of rape.
- Any sexual activity, irrespective of consent with a girl or a boy below the age of 18 constitutes statutory rape.
- Even a husband can be held guilty of rape of his wife, if the wife is less than eighteen years of age. If a man has sex with a women/girl by pretending to be her husband, it is also rape.
- However, the law is very strict with regard to offences of rape and sexual assault. There are special provisions in criminal law to protect victim from any form of harassment while seeking justice.

### 2.6.1. Section 375, 376, 376 A-D of Indian Penal Code deals with Rape.

- **Section 376A.- Punishment for causing death or resulting in persistent vegetative state of victim:** The offender shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, or with death.
- **Section 376B.- Sexual intercourse by husband upon his wife during separation:** The offender shall be punished with imprisonment of either description for a term

which shall not be less than two years but which may extend to seven years, and shall also be liable to fine.

- **Section 376C.- Sexual intercourse by person in authority:** Authority includes a person in a position of authority or in a fiduciary relationship; or a public servant; or superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force, or a women's or children's institution; or on the management of a hospital or being on the staff of a hospital. The offender in this case shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine.
- **Gang rape. Section 376D.** The offender shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine.
- **Punishment for repeat offenders. Section 376E.** Repeated offenders shall be punished with imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, or with death.'
- **Procedure for Remedy**
  - ✓ An FIR needs to be filed in the nearest police station.
  - ✓ Since 2013 (Criminal Law Amendment Act, 2013), when any information is given by a woman regarding Commission or attempt of sexual harassment, outraging her modesty or rape then such information shall be recorded, by a woman police officer or any woman officer
  - ✓ Victim has a right to be represented by a lawyer from the beginning of the case, i.e. from lodging of an FIR at the police station till the final outcome of the case.
  - ✓ The doctor should cater to the medical needs of victim with utmost priority. No hospital can deny conducting medical legal checkup (M.L.C) of the victim who has come to the hospital without police referral.

***Introduction of Panic Button in mobile phones: Recently, the 'Panic Button and Global Positioning System in Mobile Phone Handsets Rules 2016' has been notified to enable women to send distress signal to family or police authorities when faced with situations of violence. As per these Rules, all new phones have Panic Buttons to invoke emergency call and w.e.f. 01.01.2017 all types of mobile phone in India are having panic button system.***

## 2.7. CRUELTY:

- The object behind penalizing this act was to prevent torture to a woman by her husband or her relatives in connection with the demand of dowry. To ventilate the grievances about atrocities of newly married brides due to dowry or other such similar demands from their husbands or in-laws, women social workers had taken up the cause in a movement in the country and due to the effective persuasion by social compulsions, section 498A has been introduced by the Criminal Laws (Amendment) Act, 1983 to combat the menace of dowry deaths.
- The definition of cruelty is given under **Section 498A** of the Indian Penal Code 1860, according to which, whoever being the husband or the relative of the husband, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall be liable to fine.

**Explanation-** For this section cruelty means:

- (a) Any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
- (b) Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

- **Procedure For Remedy**

- ✓ A person or her relative have to file a complaint in the nearest police station if she is a victim of any such offence.
- ✓ The rest of the procedure shall be carried out in accordance with law.

*Varsha got married a year back and her in-laws and husband constantly deride her by making questionable remarks on her character, her parents' low financial standing and not giving Varsha expensive gifts and jewellery in marriage. Varsha is an educated girl but she is not allowed to step out of the house or work. All this has led Varsha to face clinical depression and suicidal thoughts.*

*She confessed this to her cousin Sumitra, who is a lawyer and told her that her husband and in-laws have never assaulted her physically so she doesn't know what is the right course of action. Sumitra informed her that what she is going through is mental cruelty which is also punishable under section 498A.*

- **POINTS TO REMEMBER**

- ✓ If the officer in-charge of a police station refuses to register FIR, then the victim can meet or send a copy of the complaint in writing to the Deputy Commissioner of Police or the Superintendent of Police. If action is still not taken, then she can file the complaint before the magistrate within whose jurisdiction the police station falls.
- ✓ National police helpline number is 100. National women helpline number is 181.

## 2.8. DOMESTIC VIOLENCE

- Protection of Women from Domestic Violence Act, 2005 (PWDVA) recognizes a life free of violence and fear and makes the state responsible for extending protection against domestic violence to women.
- PWDVA seeks to protect women from all forms of domestic violence and check harassment and exploitation by family members or relatives. The Act was passed in 2005 and was implemented from October, 2006.
- The Act broadens the definition of domestic violence. **Section 3** of the Act covers the following kinds of abuses;
  - i. Physical abuse,
  - ii. Sexual abuse
  - iii. Verbal and emotional abuse and
  - iv. Economic abuse
- The Act broadens the definition of domestic relationships by including mothers, wives, relations in the nature of marriage, sister-in-laws, daughters, and daughter-in-laws.
- PWDVA empowers a woman to claim immediate maintenance and compensation. The most significant right of the women protected by the Act is to secure accommodation.
- Rights granted to women under the domestic violence Act:
  - i. Right to reside in a shared household.
  - ii. Right to issuance of Orders- Protection Orders, Residence Orders, Monetary relief, Order for custody of children, Compensation orders, Interim and Ex parte Orders
  - iii. Right to obtain relief granted by other suits and legal proceedings.

- **Liabilities and Restrictions Imposed Upon the Respondent:**
  - i. He can be subjected to certain restrictions as contained in the Protection and Residence order issued against him.
  - ii. The respondent can be made accountable for providing monetary relief to the aggrieved person and her children and pay compensatory damages as directed in the Compensation order.
  - iii. He has to follow the arrangement\s made by the court regarding the custody of the child or children of the aggrieved person as specified in the Custody order.
- **Procedure Of Filing Complaint And Court's Duty (Sections 12-29)**
  - i. The aggrieved person or any other witness to the offence can approach a Police officer, Protection Officers or Service Provider or Magistrate.
  - ii. The Magistrate shall give a notice of the date of hearing to the Protection officers within a maximum period of 2 days or such further reasonable time as allowed by the Magistrate.
  - iii. The court is required to dispose of the case within 60 days of the first hearing.
  - iv. Upon finding the complaint to be genuine, the Magistrate may, direct the respondent or the aggrieved person, to undergo counseling.
  - v. Direct that the women shall not be evicted or excluded from the household or any part of it.
  - vi. Pass a protection order, providing protection to the women which shall remain in force till the aggrieved person applies for discharge.
  - vii. Grant monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person due to domestic violence.
  - viii. Grant custody orders of any child or children of aggrieved person.
  - ix. Compensation/damages for the injuries including mental torture and emotional distress caused by domestic violence. If upon receipt of an application from the aggrieved person, the Magistrate is satisfied that the circumstances so require, he may alter, modify or revoke an order after recording the reasons in writing.
  - x. A complaint can also be filed under Section 498-A of the Indian Penal Code.

## 2.9. TRAFFICKING OF WOMAN

- Trafficking in women and children includes placing them in conditions of forced labour or forced sex.
- The recruiters and traffickers force a woman or child into sexually or economically oppressive and exploitative situation as well as other illegal activities such as false marriages, false adoption, domestic labour and all kinds of illegal employment.
- Indian Penal Code has various provisions dealing with varied aspects of human trafficking such as:

**Section 363 A** (Kidnapping or maiming a minor for the purpose of begging); **Section 366 A** (Procuring a minor girl for sexual exploitation); **Section 370** (Trafficking)

- **Section 370.**- Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by (i) using threats, or (ii) using force, or any other form of coercion, or (iii) by abduction, or (iv) by practicing fraud, or deception, or (v) by abuse of power, or (vi) by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harbored, transferred or received, commits the offence of trafficking.

### 2.9.1. THE IMMORAL TRAFFIC (PREVENTION) ACT, 1986

Section 5 of the Act punishes procuring, inducing or taking a person for the sake of prostitution whether with or without consent. If the person in respect of whom such offence is committed is a minor, the punishment shall extend to rigorous imprisonment for a term of not less than 7 years and not more than fourteen years.

- **Procedure For Remedy**

- ✓ Complaint by victim or relatives in the nearest police station.

## 2.10. HONOUR KILLING

- Honor killing or shame killing is the homicide of a member of a family by other members, due to the perpetrators' belief that the victim has brought shame or dishonor upon the family, or has violated the principles of a community or a religion, usually for reasons such as refusing to enter an arranged marriage, being in a relationship that is disapproved by their family, having sex outside marriage, becoming the victim of rape, dressing in ways which are deemed inappropriate, engaging in non-heterosexual relations or renouncing a faith.

- In **Lata Singh v. State of Uttar Pradesh (2006)**, the Supreme Court opined that “There is nothing honourable in honor killings and they are wholly illegal”.
- The Hon’ble Supreme Court in the case of **Shakti Vahini v. Union of India (2018)**, ruled that it was illegal for so called khap panchayats, or assemblies of village elders, to interfere in marriage between two consenting adults, and to summon and punish them.
- **Procedure For Remedy**
  - ✓ File a complaint in the nearest police station.

## **2.11. THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES (POCSO) ACT, 2012**

- The Act was enacted to provide a robust legal framework for the protection of children from offences of sexual assault, sexual harassment and pornography, while safeguarding the interest of the child at every stage of the judicial process. The framing of the Act seeks to put children first by making it easy to use by including mechanisms for child-friendly reporting, recording of evidence, investigation and speedy trial of offences through designated Special Courts. The Act makes abetment of child sexual abuse an offence.
- **Offences under the act include:**
  - i. Penetrative Sexual Assault: Insertion of penis/object/another body part in child's vagina/urethra/anus/mouth, or asking the child to do so with them or some other person
  - ii. Sexual Assault: When a person touches the child, or makes the child touch them or someone else
  - iii. Sexual Harassment: passing sexually coloured remark, sexual gesture/noise, repeatedly following, flashing, etc.
  - iv. Child Pornography: With respect to pornography, the Act criminalizes even watching or collection of pornographic content involving children.
  - v. Aggravated Penetrative Sexual Assault/ Aggravated Sexual Assault
- **Gender Neutral Law:** The Act is gender-neutral.
- **Child-friendly process:** It also provides for various procedural reforms, making the process of trial considerably easier for children.

- **Child Welfare Committee (CWC):** Police officer is duty bound to inform the CWC about every case under the Act within 24 hours. CWC can appoint a support person for the child who will be responsible for psychosocial well being of the child. This support person will also liaise with the police, and keep the child and child's family informed about progress in the case.
- **Procedure For Remedy**
  - ✓ Anyone including a child (anyone below 18 years of age) can report an offence to Special Juvenile Police Unit/Local police.

## **2.12. SEXUAL HARASSMENT OF WOMAN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013**

- The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 provides protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters associated with or related to.
- The Act is based on the guidelines of the Hon'ble Supreme Court of India, in *Vishaka v. State of Rajasthan*, 1997 and principles laid down in the Convention on the Elimination of all forms of Discrimination Against Women.
- **Sexual Harassment:** Section- 2(n) of the Act defines sexual harassment at workplace is an act or a pattern of behaviour that compromises physical, emotional or financial safety and security of a woman worker. Legally speaking, sexual harassment includes such unwelcome sexually determined behaviour as:
  - i. physical contact and advances;
  - ii. demand or request for sexual favours
  - iii. sexually coloured remarks
  - iv. showing pornography;
  - v. any other unwelcome physical, verbal or non-verbal conduct of sexual nature.
- **Employee, Section- 2(f):** The definition of an 'employee' under the POSH Act is fairly wide to cover regular, temporary, ad hoc employees, individuals engaged on a daily wage basis, either directly or through an agent, contract labourers, co-workers, probationers, trainees, and apprentices, with or without the knowledge of the principal employer, whether for remuneration or not, working on a voluntary basis or otherwise, whether the terms of employment are express or implied.

- **Workplace, Section- 2(o):** The Act has introduced the concept of an ‘extended workplace’. As per the POSH Act, ‘workplace’ includes any place visited by the employee arising out of or during the course of employment, including transportation provided by the employer for the purpose of commuting to and from the place of employment. For example, the definition includes private sector organisations, Government owned/controlled establishments, hospitals/Nursing homes, vocational/Educational Institutions, dwelling place in case of a domestic worker, sports institutes, stadiums and covers unorganised sector as well.
- **Complaints Committee:**
  - i. **Internal Committee:** The POSH Act requires an employer to set up an ‘internal committee’ (“IC”) at each office or branch, of an organization employing 10 or more employees, to hear and redress grievances pertaining to sexual harassment.
  - ii. **Local Committee:** At the district level, the Government is required to set up a ‘local committee’ (“LC”) to investigate and redress complaints of sexual harassment from the unorganized sector or from establishments where the IC has not been constituted on account of establishment having less than 10 employees.
- **Complaint Process:**
  - i. A complaint is to be made in writing by an aggrieved woman within 3 months of the date of the incident. The time limit may be extended for a further period of 3 months in certain circumstances.
  - ii. Upon receipt of the complaint, the ICC or LCC must proceed to make an inquiry in accordance with the service rules applicable to the respondent or in their absence, in accordance with rules framed under the Act.
  - iii. The inquiry must be completed within a period of 90 days.
  - iv. Where the ICC finds that the allegations against the respondent are proven, it must submit a report to the employer to:
    - a. take action for sexual harassment as a misconduct.
    - b. to deduct from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs.
  - v. The employer must act on these recommendations within 60 days.

- vi. Before initiating an inquiry, the ICC or LCC may, at the request of the aggrieved woman, take steps to arrive at a settlement between the parties. However, no monetary settlement can be made as the basis of such conciliation.
- vii. In case the ICC or LCC is of the view that a malicious or false complaint has been made, it may recommend that a penalty be levied on the complainant in accordance with the applicable service rules. However, mere inability to substantiate a complaint will not attract action under this provision.

- **Provision for Interim Relief, Section -12:**

- ✓ There is provision of interim relief in the form of transfer or other suitable relief prescribed by law during the pendency of the enquiry, upon written request by the aggrieved employee.

## CHAPTER 3

### CYBER CRIMES AGAINST WOMEN

- 3.1. Information Technology solutions have paved a way to a new world of internet, business networking and e-banking, budding as a solution to reduce costs, change the sophisticated economic affairs to easier, speedy, efficient, and time saving method of transactions. Various criminals like hackers, crackers have also found ways and measures to interfere with the internet accounts and have been successful in gaining unauthorized access to the user's computer system and stolen useful data.
- 3.2. In general cybercrime may be defined as "Any unlawful act where computer or communication device or computer network is used to commit or facilitate the commission of crime". Below is a list for some of the cybercrimes along with their indicative explanation. This is to facilitate better reporting of complaints.
- Harassment through e-mails:** Harassment via email, includes black mailing, threatening and constant sending of love letters in anonymous names or regular sending of embarrassing mails.
  - Cyber stalking:** 'Stalkers are strengthened by the anonymity the internet offers. He may be on the other side of the earth, or a next door neighbor or a near relative!' It involves following a person's movements across the Internet by posting messages (sometimes threatening) on the bulletin boards frequented by the victim, entering the chat-rooms frequented by the victim, constantly bombarding the victim with emails etc. In general, the stalker intends to cause emotional distress and has no legitimate purpose to his communications.

***Ritu Kohli's Case: Warning Bell to the Government***

*Ritu Kohli's case was India's first case of cyber stalking reported in India. The victim complained to the police against the person, who was using her identity to chat over the internet. She further complained that the perpetrator was also giving away her address online and using obscene language. Her contact details were also leaked leading to frequent calls at odd hours. Consequently the 'IP' address was traced and police investigated the entire matter and ultimately arrested the offender, Manish Kathuria.*

- Cyber defamation:** Cyber defamation also called Cyber smearing can be understood as the intentional infringement of 'another person's right to his good name. 'Cyber

Defamation occurs with the help of computers and / or the Internet. It is considered more of a menace owing to its expeditious nature.

- d. **Child pornography:** Child sexually abusive material (CSAM) refers to material containing sexual image in any form, of a child who is abused or sexually exploited. Section 67 (B) of IT Act states that “it is punishable for publishing or transmitting of material depicting children in sexually explicit act, etc. in electronic form.
- e. **Cyber bullying:** A form of harassment or bullying inflicted through the use of electronic or communication devices such as computer, mobile phone, laptop, etc.
- f. **Cyber grooming:** Cyber Grooming is when a person builds an online relationship with a young person and tricks or pressures him/ her into doing sexual act.

### **3.3. Chapter XI of the IT Act deals with the offences such as tampering with computer source documents-**

- a. Section 65 of the Act makes the tampering with computer stores documents, punishable upto 3 years or with a fine of Rs.2 lakhs or with both.
- b. Section 66 makes the hacking with computer system punishable for three years.
- c. Section 67 deals publishing of obscene information in electronic form. Punishment for first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to one lakh rupees and in the event of a second or subsequent conviction with imprisonment of either description for a term which may extend to ten years and also with fine which may extend to two lakh rupees.
- d. Section 70 grants the power to the appropriate government to declare any computer, computer system or computer network, to be a protected system. Only authorized person has the right to access to protected system. Punishment for infringement is imprisonment which may extend to ten years and fine.

### **3.4. Procedure for Remedy:**

- ✓ In case of cyber crimes, a victim may contact the nearest cyber cell or police station.
- ✓ A complaint may also be filed anonymously through National Cybercrime Reporting Portal ([cybercrime.gov.in](http://cybercrime.gov.in)).
- ✓ To file a complaint alleging commission of a cyber crime the following documents must be provided:
  - In case of **hacking** the following information should be provided:  
*Server logs*.
    - ❖ Soft copy as well as hard copy of defaced web page in case your website is defaced.

- ❖ In case the data is compromised on your server or computer or any other network equipment, soft copy of original data and compromised data is required.
- ❖ Access control mechanism details i.e. who had what kind of the access to the compromised system.
- ❖ List of suspects if any.
- ❖ All relevant information leading to the answers to following questions
  - What has been compromised in the system?
  - Who might have compromised the system?
  - When the system was compromised?
  - Why the system might have been compromised?
  - Where is the impact of attack-identifying the target system from the network?
  - How many systems have been compromised by the attack?
- In case of **e-mail abuse** like vulgar e-mails, etc., the following information should be provided:
  - ❖ Extract the extended headers of offending e-mail and bring soft copy as well as hard copy of offending e-mail.
  - ❖ Please do not delete the offending e-mail from your e-mail box.
  - ❖ Please save the copy of offending e-mail on your computer's hard drive.

- **FEW MEASURES FOR ONLINE SAFETY**

- ✓ Keep an eye out for phoney email messages
- ✓ Don't respond to email messages that ask for personal information
- ✓ Steer clear of fraudulent Web sites used to steal personal information
- ✓ Pay attention to privacy policies on Web sites and in software
- ✓ Guard your email address
- ✓ Strong Passwords

## CHAPTER 4

### WOMEN AND THE REPRODUCTIVE HEALTH RIGHTS

#### **4.1. ABORTION OR TERMINATION OF PREGNANCY**

- Relevant provisions of *The Indian Penal Code, 1860-*
  - (1) **Section 312:** causing miscarriage.
  - (2) **Section 313:** causing miscarriage without women's consent.  
*(whoever causes miscarriage of a woman without her consent shall be punished with ten years imprisonment and fine.)*
- However, there are certain situations where it is legal to terminate the pregnancy on the advice of the doctor if:
  - (a) To continue pregnancy involves the risk to the mother's life (physical or mental); or
  - (b) The pregnancy is caused by rape; or
  - (c) The child if born, would be gravely deformed.

#### **4.2. THE MEDICAL TERMINATION OF PREGNANCY ACT, 1971**

- This act provides for the termination of certain pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto.
- Forcing a woman to terminate pregnancy is illegal.
- Abortion is legal when it is done according to the law.
- It should be done only in government hospital or in hospital authorized by the government.
- A registered medical practitioner shall not be guilty of any offence if any pregnancy is terminated by him in accordance with the provisions of the Act.

*Priyanka conceived a child after 3 years of her marriage. The doctor told her that she is having some problem in her pregnancy. After 13 weeks, the foetus was diagnosed some genetic disorder. Due to this disorder the child would have faced serious mental problem if he would survive, as well there was a threat to the mother's life also. Priyanka's mother wants her to terminate her pregnancy.*

### 4.3. FEMALE INFANTICIDE AND FOETICIDE

*During Radha's second pregnancy, she had to undergo ultrasound test for finding genetic abnormalities of the foetus, if any. During the process her husband secretly asked the doctor about the gender of the foetus. When doctor refused to tell him about the gender of the child he offered him some money and asked him that he does not want a girl child and in case if the foetus is a girl child he wants the child to be aborted.*

*Doctor told him that the sex detection is a crime and he will not tell him about the sex of the child. He also told him that he should not discriminate between a girl and a boy as both of them are innocent and girls are not lesser than boys in any way.*

- Female infanticide is the intentional killing of infant girls.
- Destroying foetus in the womb, because she is likely to be born as a girl child, is female foeticide.
- All involved in female foeticide deliberately forget to realize that when the foetus of a girl child is destroyed, a woman of future is crucified and the sex ratio gets affected.
- In addition to the active methods undertaken to eliminate baby girls soon after birth, neglect and discrimination leading to death and sex-selective abortion are also means by which many female children die each year.

## CHAPTER 5

### PROCEDURAL GUIDELINES

#### **5.1. FREE LEGAL AID AND SERVICES**

*Anita was a labour at the construction site. While she was on duty, she tripped off from the first floor. She got her leg and hand fractured for which she claimed for the compensation. On the refusal of the contractors to pay the compensation, Anita felt helpless and sat quietly. Mr Tariq is the lawyer where Suresh (Anita's Husband) is working as a driver suggested Anita that she can claim for the compensation in the court.*

- Article 39-A of the Constitution of India provides for free legal Aid for the poor and weaker sections of the society to ensure justice thereof.
- In the year 1987, the Legal Services Authority Act was enacted by the Parliament (that came into force on 9<sup>th</sup> November, 1995) with an objective to establish a nationwide uniform network for providing free and competent legal services to the weaker sections of the society on the basis of equal opportunities.
- Article 14 of the Indian Constitution makes it obligatory for the state to ensure equality before the law and provide for a legal system which promotes justice on the basis of equal opportunities to all.
- The National Legal Services Authority (NALSA) has been constituted under the Legal Services Authority Act, 1987 to monitor and evaluate the implementation of legal services under the Act.
- The Chief Justice of India is the Patron-in-Chief of NALSA.
- In every State, a Legal Services Authority and in every High Court Legal Services Committee has been constituted.
- Further, at each District Level, District Legal Services Authority and Taluka Legal Services Committees have been constituted to give effect to the policies and directions of the NALSA and to provide free legal services to the people and conduct Lok Adalats in States.

- The State Legal Services Authorities are chaired by Hon'ble Chief Justice of the State and District and Taluka Legal Services Committees are chaired by Judicial Officer of the District or the Taluka.

#### **5.1.1. Functions of National Legal Services Authority (NALSA)**

- (a) To provide free Legal Services to the eligible person,
- (b) Following persons have been identified for being eligible to avail the free Legal Aid Services:

- ❖ Women and children;
- ❖ SC/STs;
- ❖ Industrial Workers;
- ❖ Victims of massive disaster/violence and natural calamities;
- ❖ Disabled persons;
- ❖ Persons in custody;
- ❖ Persons whose annual income does not exceed Rs. 1,00,000/;
- ❖ Victims of human trafficking, etc.

#### **5.1.2. Free Legal Aid and Services include**

- (a) Providing of an Advocate for legal proceedings,
- (b) Payment of court fees/process fee or all other charges payable incurred in connection to legal proceedings,
- (c) Preparation of Appeals/ Paper books, including printing and translation of documents in legal proceedings,
- NALSA has also initiated Legal Aid Council Scheme to provide meaningful legal assistance to under trial prisoners who due to lack of resources or other disabilities cannot engage a council to defend them.
- Now Legal Aid Councils have been attached to each Magistrate Court to provide assistance and defend a person who is not able to engage a council right from the stage he/she is produced in the court by the police.
- The target groups are also to be informed that NALSA has also formulated a Counseling and Conciliation Scheme for the settlement of disputes through negotiation and conciliation in order to guide and motivate the migrants to resolve their disputes amicably.
- Counseling and conciliation centers are being set up in all the districts of the country.

## 5.2. RIGHT OF ARRESTED WOMEN

*At around 8:30 in the evening, Mrs. Mala was having her dinner at her house. Some policemen knocked her door and told her that she is under arrest as a complaint has been lodged against her. They forcibly held her hand and brought her to the police station. Her sister wanted to accompany her but the policemen refused her to join them.*

- Every woman must be aware of some basic rights relating to arrest to ensure her well being while she is in custody.
  - i. She must be informed about the grounds for her arrest and full particulars of charges levied on her for that matter of fact.
  - ii. She has right to see the warrant if arrested under warrant (Sec.75 CrPC)
  - iii. She has the right to privacy while recording statement.
  - iv. She has the right to consult the legal practitioner of her choice and to be defended by him.
  - v. The accused must be produced before the magistrate within 24 hours of arrest.
  - vi. It is the right of the arrestee to inform of her arrest to either her relatives or to her friends.
  - vii. A woman cannot be arrested before sunrise or after sunset except with the prior permission of a magistrate.
  - viii. A woman can only be taken into custody in presence of a woman police officer as far as practicable and the arrest must be affected with proper dignity.
  - ix. No beatings or force can be administered while arresting a female accused.
  - x. The search examination of the female prisoners shall be carried out by the matron under the general or the special order of the medical officer.
  - xi. The female prisoners have the right to live separately from the male prisoners.
  - xii. All the prisoners have the basic human rights such as hygienic food, shelter, medical facilities and facilities of reading and writing.
  - xiii. If arrested soon after a child birth women cannot be taken before the magistrate until they are in proper conditions to travel.
  - xiv. Women prisoners have the right to speedy trial.
  - xv. Examination of body of an arrested person by a registered medical practitioner at the request of the arrested person in case of torture and maltreatment in the lock ups.
  - xvi. The legal assistance to a poor or indigent accused, arrested and put in jeopardy of life or personal liberty, is a Constitutional imperative mandated not only by Article 39-A but also by Articles 14 and 21 of the constitution.
  - xvii. Rights of the pregnant women in jails (pre-natal and post-natal care, Gynecological examination etc.)

### **5.3. CRIMES AGAINST WOMEN CELL**

- The crimes against women cell was set up in 1983 at the central level in the Delhi Police.
- The need for a gender-specific police response had been felt for some time earlier due to the following reasons:
  - i. Low status of women,
  - ii. Little inclination to take their problems to police stations staffed largely by male police officers who did not show sensitiveness towards female victims.
- In 1986, separate cells on similar lines were set up in each of the nine districts of Delhi. Most importantly, the central Crimes against Women Cell was provided with enhanced manpower, infrastructure and responsibilities.
- Counseling of families is an essential part of the functioning of these cells.
- Other cities and states in India have set up similar units within their police forces with some southern states experimenting with all woman police stations to provide a more enabling environment for women complaints.

## CHAPTER 6

### NATIONAL COMMISSION FOR WOMEN

6.1. The National Commission for Women was set up as statutory body in January 1992 under the National Commission for Women Act, 1990 with a mandate to safeguard the constitutional rights of women. It is concerned with advising the government on all policy matters affecting women.

6.2. Successive Commissions on Women have noted in their Reports the unequal status of women obtaining in every sphere of life and had suggested the setting up of an agency to fulfill the surveillance functions as well as to facilitate Redressal of grievances of women. Having realized the importance of the issues, the government decided to set up a Commission for Women, to be called the National Commission For Women.

The objective of the NCW is to represent the rights of women in India and to provide a voice for their issues and concerns.

6.3. The functions of the Commission as per Section 10 of the act are as follows:

- Investigate and examine all matters relating to the safeguards provided for women under the Constitution and other laws;
- Present to the Central Government, annually and at such other times as the commission may deem fit, reports upon the working of those safeguards;
- Make in such reports, recommendations for the effective implementation of those safeguards for improving the conditions of women by the Union or any State;
- Review, from time to time, the existing provisions of the Constitution and other laws affecting women and recommend amendments thereto so as to suggest remedial legislative measures to meet any lacunae, inadequate or shortcomings in such legislation;
- Take up the case of violation of the provisions of the Constitution and the other laws relating to women with the appropriate authorities;
- Look into complaints and take *suo moto* notice of matters relating to –
  - a) Deprivation of women's rights;
  - b) Non-implementation of laws enacted to provide protection to women and also to achieve the objective of equality and development;
  - c) Non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships and ensuring welfare and providing relief to women, and take up the issues arising out of such matters with appropriate authorities.
- Call for special studies or investigations into specific problems or situations arising out of discrimination and atrocities against women and identify the constraints so as to recommend strategies for their removal;

- Undertake promotional and educational research so as to suggest ways of ensuring due representation of women in all spheres and identify factors responsible for impeding their advancement such as lack of access to impeding their advancement such as lack of access to housing and basic services, inadequate support services and technologies for reducing drudgery and occupational health hazards and for increasing their productivity;
- Participate and advise on the planning process of socio-economic development of women;
- Evaluate the progress of the development of women under the Union and State;
- Inspect or cause to be inspected jail, remand home, women's institution or other place of custody where women are kept as prisoners or otherwise, and take up with the concerned authorities for remedial action, if found necessary;
- Found litigation involving issues affecting a large body of women.

Similarly at the state level also Commission for Women exist with the same objectives and functions. The Resource Person must appraise the target groups about the procedure to approach the Commission.

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# **Bsc Projects Private Limited vs Ircon International Limited on 22 March, 2023**

**Author: Yashwant Varma**

**Bench: Yashwant Varma**

\$~6  
\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ ARB.P. 39/2023  
BSC PROJECTS PRIVATE LIMITED ..... Petitioner  
Through: Mr. Bhupesh Narula, Adv.

versus

IRCON INTERNATIONAL LIMITED ..... Respondent  
Through: Mr. Vivek Kumar Verma, Adv.

CORAM:  
HON'BLE MR. JUSTICE YASHWANT VARMA  
ORDER

% 22.03.2023

1. This petition under Section 11 of the Arbitration and Conciliation Act, 1996 [the Act] has been instituted for the Court invoking its powers conferred by Section 11 of the Act since the respondent has failed to abide by the appointment procedure. The existence of the arbitration clause as contained in the General Conditions of Contract [GCC] is not disputed. For the sake of clarity the said clause is reproduced hereinbelow: -

"73.4(a) (ii) Arbitration Tribunal:

In cases where the total value of all claims/counter-claims exceeds Rs. 2.00 Crore, the Arbitral Tribunal shall consist of a panel of three Officers not below GM level.

For this purpose, the Employer will send a panel of more than 3 names to the contractor, within 60 days from the day when a written and valid demand for arbitration is received by the Employer. Contractor will be asked to suggest to the Chairman and Managing Director at least 2 names out of the panel for appointment as contractor's nominee within 30 days from the date of dispatch of the request by the Employer. The Chairman and Managing Director shall appoint at least one out of them as the contractor's nominee and will, also simultaneously appoint the balance number of arbitrators either from the panel or from outside the panel, duly indicating the „presiding arbitrator“ from amongst the 3 arbitrators so appointed. The Chairman and Managing Director shall complete this exercise of appointing the

Arbitral contractor's nominees. While nominating the arbitrators it will be necessary to ensure that one of them is from the Accounts Department. An officer of AGM rank of the Accounts Department shall be considered of equal status to the GM of the other departments of IRCON for the purpose of appointment of arbitrator."

2. The respondent has firstly taken up the issue of the petitioner / contractor having failed to complete the work in accordance with the terms of the contract and has thus contended that the claims as raised are not liable to be countenanced.

3. Mr. Narula, learned counsel appearing for the petitioner, however, draws the attention of the Court to page no.54 of the paper book and more particularly to the Completion Certificate dated 14 June 2021 which is stated to have been issued by the respondent itself. It becomes pertinent to note that the said certificate refers to the actual completion date as 31 December 2020. However, this aspect is one which need not be finally determined by this Court at this stage since all contentions of respective parties in this respect shall be open to be addressed before the Arbitral Tribunal.

4. That takes the Court to the procedures which were initiated by the petitioner for the purposes of settlement of disputes. On the record is a letter of 21 November 2022 written by the petitioner calling upon the respondent to take appropriate steps for the resolution of the disputes which had arisen. It had also made a request for an authorized representative being duly deputed to undertake a joint measurement exercise. It was, however, pointed out that despite the aforesaid request having been made, the respondent failed to act in terms thereof. The request for the constitution of the Arbitral Tribunal since mutual settlement was not being resorted to was again reiterated by the petitioner in its communication dated 30 November 2022. However and since the respondent neither agreed to undertake the mutual settlement, the petitioner was constrained to issue a notice under Section 21 on 13 December 2022. Along with the said notice, the petitioner also indicated the name of its nominee arbitrator.

5. From the side of the respondent, it is contended that the arbitration clause clearly envisages a process of mutual settlement being undertaken before the matter is ultimately referred to arbitration.

6. It would be relevant to note that the arbitration clause refers to parties exploring the possibility of a mutual settlement and in case of a failure to arrive at such a settlement, the Arbitral Tribunal is liable to be constituted. Insofar as the said issue is concerned, the Court notes that a learned Judge in Oasis Projects Ltd. v. Managing Director, National Highway and Infrastructure Development Corporation Limited, [2023 SCC OnLine Del 645] has recently held that those processes would clearly not be mandatory.

7. That takes the Court then to the question of the proceedings liable to be initiated for the purposes of constitution of the Arbitral Tribunal itself. As per Clause 73.4(a)(ii), the employer is to forward a panel of more than three names to the contractor within sixty days from the day when a written and valid demand for arbitration is received. From the panel which is so provided, the contractor is required to suggest to the Chairman and Managing Director at least two names. The Chairman and

Managing Director, thereafter, is empowered to appoint a nominee arbitrator from at least one out of the names as suggested. That Arbitrator would be recognised as the contractor's nominee.

8. Quite apart from the fact that the respondent has abjectly failed to act in terms of the aforesaid clause since no panel had been provided for the consideration of the petitioner, the Court observes that Clause 73.4(a)(ii) clearly does not appear to leave any element of choice in the hands of the contractor. It is ultimately for the Chairman and Managing Director to make that nomination.

context that the validity of the arbitration and appointment process itself is assailed by Mr. Narula.

9. According to Mr. Narula, while construing the very same clause, the Court in M/S CMM Infraprojects LTD. vs. Ircon International LTD., [2021 SCC OnLine Del 5656] has made the following pertinent observations: -

"40. In CORE (supra), Clause 64 of the GCC which dealt with the procedure of resolution of disputes and provided for demand for arbitration, underwent a change, subsequent to the coming into force of the Arbitration and Conciliation (Amendment) Act, 2015. The Ministry of Railways made a modification to Clause 64 of the GCC, and the Railway Board issued a notification to that effect. The modified clauses which were applicable to the facts of the said case on account of the value of the work contract being more than Rs. 1 Crore, were Clauses 64(b)(a)(ii) and 64(3)(b) of the GCC. As noted above, the former pertained to situations wherein the applicability of Section 12(5) was waived off and the latter pertained to situations where there was no waiver.

41. On considering the afore-noted clauses, the Supreme Court observed that since after coming into force of the Amendment Act of 2015, Clause 64 of GCC had been modified, the High Court was not justified in appointing an independent Sole Arbitrator. Accordingly, the parties were relegated to the procedure of appointment under Clause 64(3)(b) of the GCC, which was found to be a valid clause. The crux of the Supreme Court's reasoning is that ".....Since the respondent has been given the power to select two names from out of the four names of the panel, the power of the appellant nominating its arbitrator gets counter-balanced by the power of choice given to the respondent. Thus, the power of the General Manager to nominate the arbitrator is counter-balanced by the power of the respondent to select any of the two nominees from out of the four names suggested from the panel of the retired officers. In view of the modified Clauses 64(3)(a)(ii) and 64(3)(b) of GCC, it cannot therefore be said that the General Manager has become ineligible to act as the arbitrator."

42. In contrast, in the instant case the relevant arbitration clause has not been modified. Thus, if we were to do a conjoint reading of Clauses 73.4(a)(ii) and 73.4(a)(vi), it is manifest that the arbitration clause contemplates appointment of serving officials of the Respondent as arbitrators. The clause therefore as worded currently, runs foul with Section 12(5) and Schedule VII of the Act. Thus, CORE (supra) is distinguishable on facts and is not applicable.

43. The other anomaly which merits consideration is that the Managing Director of the Respondent, who has a direct interest in members of the Arbitral Tribunal and also plays a role in the appointment of the 3rd arbitrator i.e., the contractor's nominee. This is against the spirit of the judgment in Perkins Eastman (*supra*). This argument was perhaps not raised in CORE (*supra*)."

10. The Court finds from a reading of the decision in CMM Infraprojects that the learned Judge has for reasons recorded ultimately found that Clause 73.4(a)(ii) stands on a completely distinct and different footing from the clause which had fallen for consideration before the Supreme Court in Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV), [(2020) 14 SCC 712]. Central Organisation for Railway Electrification had upheld the appointment process since the contractor in terms of the arbitration agreement did have the requisite right to make a choice out of a broad-based panel. While it may be only observed that Perkins was cited for the consideration of the Bench which had decided Central Organisation for Railway Electrification [and which appears to have escaped the attention of the Court while rendering judgment on CMM Infraproject], the Supreme Court had on an ultimate analysis found that the arbitration clause was not only distinct from the one which had been disapproved, it had on an ultimate analysis found that the choice conferred on parties was sufficient to uphold the appointment process. That clearly does not appear to be the position which obtains here when one bears in mind that it is the Chairman and Managing Director who was to ultimately make the appointment for and on behalf of both sides. Additionally, the clause also contemplated serving Railway officers being appointed as Arbitrators.

11. Accordingly, and for all the aforesaid reasons, the instant petition is allowed.

12. The Court notes that the petitioner has already nominated Shri M.C. Singhal as its nominee arbitrator.

13. Since the respondent has failed to act in terms of the arbitration agreement, the Court hereby appoints Mr. Justice Vineet Saran [Official Address: 65 Lodhi Estate, New Delhi - 110003] [Mobile No. 9937233336] [email: vineetsaranjustice@gmail.com] as the nominee on behalf of the respondent.

14. The two nominated arbitrators shall now proceed to designate a Presiding Arbitrator.

15. This is subject to the Arbitrator named above making the necessary disclosure under Section 12(1) of the Act and not being ineligible under Section 12(5) of the Act.

16. The fees of the arbitrator shall be decided according to the Fourth Schedule of the Act.

YASHWANT VARMA, J.

MARCH 22, 2023 bh

## Dinesh Marwah vs State Of Nct Of Delhi on 28 March, 2023

\$~72

\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ CRL.REV.P. 335/2023 & CRL.M.A. 8287/2023  
DINESH MARWAH

..... Petitioner

Through: Mr. Vikas Pahwa, Sr. Advocate  
alongwith Mr. Prabhav Ralli, Ms.  
Raavi Sharma and Mr. JKushagra  
Sharma, Advs.

versus  
STATE OF NCT OF DELHI ..... Respondent  
Through: Mr. Pradeep Gahalot, APP for the  
State with SI Himanshi, PS Punjabi  
Bagh.

CORAM:  
HON'BLE MR. JUSTICE ANISH DAYAL  
ORDER

% 28.03.2023 CRL.M.A. 8288/2023 (Exemption)

1. Exemption is allowed subject to all just exceptions.

2. Application is disposed of.

1. This petition has been filed seeking setting aside the order dated 21.02.2023 passed by the Ld. ASJ, Tis Hazari Courts, Delhi, in SC No.591/2021 arising out of FIR No.297/2021 under Sections 376/354/506/34 IPC, PS Punjabi Bagh, Delhi.

2. Ld. Sr. Counsel for the petitioner submits that the complainant got registered a complaint that she has been sexually assaulted from years 2008 to 2021, therefore, there is delay of ten years from the alleged initial incident. The thrust of the Ld. Sr. Counsel is on the statement of the complainant recorded under Section 164 Cr.P.C whereby she says that she was undergoing treatment for depression and because of that, she has called up at No.100, so the complaint made by her is under hallucination. Now she is feeling better and she states that there is no wrong act which is being done by the accused and the complaint had been filed when she was undergoing hallucination. Reliance is placed on similar facts and circumstances as decided by this Court inter alia in Vishal Chawla vs. State, 2019 SCC Online Del 9227, State vs. Dr. Gajraj Singh, 2017 SCC Online Del 6672 and a decision in Crl. Revision No.407/2010 titled Sonu vs. State, order dated 20.01.2011.

3. Issue notice.

4. Ld. APP accepts notice and will file a Status Report before the next date of hearing.

5. Considering the nature of the issues involved, the complainant may also be notified through the IO to be present in person or through counsel on the next date of hearing.

6. List on 10.08.2023.

1. This application has been filed seeking stay of the operation of the impugned order dated 21.02.2023 passed by the Ld. ASJ, Tis Hazari Courts, Delhi.

2. In view of the above facts and circumstances, the operation of the impugned order dated 21.02.2023 is stayed till the next date of hearing.

3. List on 10.08.2023.

4. Order be uploaded on the website of this Court.

ANISH DAYAL, J MARCH 28, 2023/kct

# **Exemption) Yamini Manohar vs T K D Keerthi on 21 April, 2023**

**Author: Amit Bansal**

**Bench: Amit Bansal**

\$~22

\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ CRP-IPD 4/2023, CM 48/2023 (for stay), CM 49/2023 (for exemption)

YAMINI MANOHAR

Through:

..... PETITIONER

Mr. J Sai Deepak with Ms. Shraddha Chirania, Mr. Kartikey Bhatt and Mr. R. Abhishek, Advocates.

versus

T K D KEERTHI

Through:

..... RESPONDENT

Mr. Kunal Khanna, Ms. Vridhi Pasricha and Mr. Prakash Walia, Advocates.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL  
ORDER

% 21.04.2023

1. Arguments heard.

2. Judgment reserved.

3. Liberty is given to both the parties to file a two page written note of submissions within three days.

AMIT BANSAL, J.

APRIL 21, 2023 rt Signing Date:21.04.2023 18:49:24

# **Gautam Spinners vs Commissioner Of Customs (Import), New ... on 6 January, 2023**

**Author: Vibhu Bakhru**

**Bench: Vibhu Bakhru, Purushaindra Kumar Kaurav**

\$~14  
\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ W.P. (C) 122/2023 & CM No. 464/2023  
GAUTAM SPINNERS ..... Petitioner  
Through: Mr. Rajesh Rawal, Adv.  
Versus  
COMMISSIONER OF CUSTOMS (IMPORT),  
NEW DELHI & ANR. ..... Respondents  
Through: Mr. Harmeet Singh, Ms. Suhani  
Mathur & Mr. Jatin Kumar  
Gaur, Advs.  
CORAM:  
HON'BLE MR. JUSTICE VIBHU BAKHRU  
HON'BLE MR. JUSTICE PURUSHAIN德拉 KUMAR KAURAV  
ORDER

% 06.01.2023 CM No.465/2023 (for exemption)

1. Exemption is allowed, subject to all just exceptions.

2. The application is disposed of.

W.P.(C) 122/2023

3. Issue notice.

4. The learned counsel appearing for the respondents accepts notice.

5. The petitioner has filed the present petition, inter alia, impugning the proceedings initiated pursuant to the Show Cause Notice dated 05.08.2021. The petitioner claims that proceedings cannot be continued in respect of the said Show Cause Notice dated 05.08.2021 as the same is time-barred. He further submits that the proceedings were kept in abeyance pursuant to an approval under Section 28(9A)(c) of the Customs Act, 1962, in view of the directions issued to the aforesaid effect by the Central Board of Indirect Taxes and Customs (Board). He, however, submits that the directions issued by the Board were not warranted as there were no grounds to keep the Show Cause Notice in abeyance. He states that the next date of hearing before the concerned officer is 09.01.2023.

6. In view of the above, the concerned officer may continue with the hearing but shall not pass the

order till the next date of hearing.

7. Counter affidavit, if any, be filed within a period of two weeks from today.

8. Rejoinder, if any, be filed within a period of one week thereafter.

9. List on 15.02.2023.

Dasti under signature of Court Master.

VIBHU BAKHNU, J PURUSHAINDRA KUMAR KAURAV, J JANUARY 6, 2023 'gsr'

# Jumah Khan vs The State Govt. Of Nct Of Delhi on 16 March, 2023

\$~46

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ BAIL APPLN. 991/2022

JUMAH KHAN

..... Petitioner

Through: Tanya Agarwal, Advocate

versus

THE STATE GOVT. OF NCT OF DELHI ..... Respondent

Through: Mr. Ritesh K Bahari, APP for the  
State Insp. Rahul, SP Cell, Pandav  
Nagar

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

% 16.03.2023

1. This application has been filed seeking modification in the judgment dated 5th January, 2023 passed by this Court in Bail Apnl. 991/2022 whereby this Court had granted bail to the petitioner on furnishing personal bond in the sum of Rs.1 lacs with two sureties of the like amount. The petitioner has stated in the application that he has not been able to arrange for two sureties of Rs.1 lacs each but is able to furnish just one surety. It is submitted that the petitioner is in custody for the last about 8 years and 8 months and because of this long incarceration, he has lost his ties with friends and is left with no other remedy but to seek modification of the judgment dated 5th January, 2023. Learned counsel for the petitioner states that he may be permitted to furnish one surety of Rs.50,000/-.

2. Accordingly, the bail conditions imposed in the judgment dated 5th January, 2023 are modified to the extent that the petitioner be released on bail on furnishing personal bond in the sum of Rs.50,000/- with one surety of the like amount subject to the satisfaction of the Ld. Trial Court.

3. Yet another prayer has been made relating to the condition of requisitioning of assurance from the Embassy / High Commission of Afghanistan, the country, to which the petitioner belongs, that the petitioner will not leave the country. Learned counsel for the petitioner has contended that since the change of governance in Afghanistan and new regime, this confirmation may be implausible and would again delay the release of the petitioner.

4. In the opinion of this Court, while these conditions have been imposed in consonance with the decision of Hon'ble Supreme Court in particular as held in Supreme Court Legal Aid Committee (representing undertrial prisoners) v. UOI (1994) 6 SCC 73, the Hon'ble Supreme Court has also considered situations where accused are unable to furnish surety and held in decision dated 31st January, 2023 in Re: Policy Strategy for Grant of Bail SMWP (Crl.) 4/2021 has issued guidelines

including inter alia allowing the concerned courts to suo moto take up the cases and consider whether conditions of bail require relaxation / modification.

5. In view of the above, the condition imposed relating to the necessity of requisitioning a certificate of assurance from the Embassy/High Commission of Afghanistan, is accordingly deleted.

6. In view of these modifications, it is additionally directed in pursuance of para 9(v) of the said judgement that the petitioner shall report to the IO on every Saturday at 4:00 P.M., unless leave of absence is obtained from the Ld. Trial Court. The petitioner will duly deposit his passport with the Ld. Trial Court.

7. The bail conditions of judgment dated 5th January, 2023 are accordingly modified to the extent stated above.

8. The application is disposed of accordingly.

9. Order be uploaded on the website of this Court.

ANISH DAYAL, J MARCH 16, 2023/sm

# Kewal Krishan Kumar vs Enforcement Directorate on 2 February, 2023

**Author: Jasmeet Singh**

**Bench: Jasmeet Singh**

\$~33

\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ BAIL APPLN. 3575/2022  
KEWAL KRISHAN KUMAR ..... Petitioner  
Through: Mr Mohit Mathur, Sr. Adv. with  
Mr Vikas Arora, Mr Amit Bhatia and  
Ms Radhika Arora, Advs.  
versus

ENFORCEMENT DIRECTORATE ..... Respondent  
Through: Mr Zoheb Hossain, Special Counsel  
for E.D. with Mr Vivek Gurnani,  
Adv.

CORAM:  
HON'BLE MR. JUSTICE JASMEET SINGH  
ORDER

% 02.02.2023 This is an application seeking bail on medical condition of the applicant. As per the medical report of the applicant dated 05.01.2023 it has been stated:

"On 05/12/2022, the inmate patient was admitted at DDU Hospital surgery dept. for the complaint of pain abdomen. Diagnosed as a case of acute cholecystitis with Hypertension with epilepsy with varicose veins thereafter was discharged on oral medication on 08/12/2022.

On 19/12/2022, the inmate patient was referred on emergency to DDU Hospital in view of raised blood pressure wherein he was examined and was advised medicine accordingly.

On 04/1/2023, the inmate patient was referred to GB Pant hospital GI Surgery dept. wherein he was advised blood investigation, plan lap. Cholecystectomy, review PAC and review after getting fitness and clearance.

At present, the inmate patient is stable and all the medicines are being provided from jail Dispensary."

In view of the observations of the Medical Officer, I am of the view that the applicant needs to be examined by a Board of Doctors who will opine whether the applicant requires continuous

psychiatric observation and medicines and whether the applicant can be provided adequate medical treatment from jail authorities.

The order be communicated to the Director, RML and the applicant shall be produced before the committee of Doctors on 09.02.2023.

The report be placed before the Court immediately thereafter. The report of committee of the Doctors shall also be shared with the Medical Superintendent, Tihar Jail who shall also opine whether the treatment can be provided from the jail. The report be also shared with learned counsel for the parties.

List on 14.02.2023.

Order be communicated to the Director, RML as well as to the Jail Superintendant.

JASMEET SINGH, J FEBRUARY 2, 2023 sr Click here to check corrigendum, if any

# **M/S Gap International Sourcing (India) ... vs Additional Commissioner, Cgst ... on 1 May, 2023**

**Author: Vibhu Bakhru**

**Bench: Vibhu Bakhru**

\$~64

\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ W.P. (C) 11399/2022 & CM APPL. 33549/2022  
M/S GAP INTERNATIONAL SOURCING (INDIA)  
PRIVATE LIMITED ..... Petitioner  
Through: Mr. G Shivadass, Sr. Adv.  
with Mr. Devashish  
Marwah & Mr. Rishabh J,  
Advs.

Versus  
ADDITIONAL COMMISSIONER, CGST  
APPEALS- II & ORS. ..... Respondents

Through: Mr. Akshay Amritanshu,  
SSC with Mr. Ashutosh  
Jain & Mr. Samyak Jain,  
Advs.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU  
HON'BLE MR. JUSTICE AMIT MAHAJAN  
ORDER

% 01.05.2023

1. The petitioner has filed the present petition, inter alia, impugning an order dated 07.02.2022, whereby the appeals preferred by the Revenue against the four separate orders dated 09.01.2020, 02.03.2020, 07.05.2021 and 31.05.2021 passed by the Adjudicating Authority (respondent no.2) granting refund of unutilized Input Tax Credit (hereafter 'ITC') was allowed. The petitioner also impugns the orders dated 25.03.2022 and 24.05.2022, whereby the appeals preferred by the petitioner against the orders-in-original dated 31.05.2021 and 18.11.2021 passed by the Adjudicating Authority rejecting the petitioner's claim for refund of ITC in respect of the Financial Year 2019-20, were rejected. In addition, the petitioner also impugns an order dated 23.03.2022, whereby the petitioner's appeal against an order dated 02.03.2020 to the extent it partially denied the

2. The controversy in the present petition relates to denial of the petitioner's claim for refund of accumulated ITC in relation to export of services for the periods April, 2018 to June, 2018; July, 2018 to September, 2018; October, 2018 to December, 2018; January, 2019 to March, 2019; April, 2019 to September, 2019 and October, 2019 to March, 2020.

3. The petitioner filed separate applications seeking refund of ITC in respect of the aforesaid

periods. The Adjudicating Authority had allowed the applications (for the four quarters of the Financial Year 2018-19) in terms of the orders dated 09.01.2020, 02.03.2020, 02.05.2020 and 07.05.2020.

4. These orders were reviewed by the Principal Commissioner of Central Goods and Services Tax, Delhi-South and the Revenue appealed the said refund orders before the Appellate Authority (respondent no.1). The Appellate Authority allowed the appeals by the impugned order dated 07.02.2022 and held that the petitioner was not entitled to the refund as claimed.

5. The petitioner had claimed refund of ITC on the ground that it related to remuneration for services rendered to overseas entities, in terms of an Advisory Service Agreement. The Appellate Authority noted that the petitioner's remuneration under the said Agreement was based on costs plus a mark up of 15% and observed that the petitioner was involved in facilitating supply of goods by various suppliers to the foreign entities. The Appellate Authority held that the petitioner was acting as an agent, and the services provided by it fell under the category of intermediary services. Thus, in terms of Section 13(8) of the Integrated Goods & Services Tax Act, 2017 (hereafter 'IGST Act') read with Section 2(6) of the IGST Act, services rendered

6. The petitioner's claim for refund of unutilized ITC for the Financial Year 2019-20 was rejected by the Adjudicating Authority on similar grounds. The petitioner's appeal to the Appellate Authority also met the same fate.

7. The petitioner also filed an appeal against the order dated 02.03.2020, to the extent that the petitioner's claim for refund for the quarter July, 2018 to September, 2018 had been partially rejected. The petitioner filed a claim for refund of an amount of 88,81,834/- which was revised to 88,16,495/-. However, the Adjudicating Authority had computed the refund amount at 80,03,575/- and had rejected the claim to the extent of 8,78,258/-. The petitioner claims that the same is erroneous as it is based on erroneous computation of the turnover.

8. The principal question raised in this petition is whether the Appellate Authority was correct in holding that the services rendered by the petitioner in terms of the Advisory Services Agreement were in the nature of intermediary services.

9. It is the petitioner's case that it had entered into two separate agreements namely, a 'Support Services Agreement' and an 'Advisory Services Agreement' with a foreign entity (Gap International Sourcing Inc.). The petitioner does not dispute that the services rendered pursuant to the Support Services Agreement are in the nature of intermediary services. However, it claims that the services rendered pursuant to the Advisory Services Agreement are not in the nature of intermediary services.

10. According to the petitioner, the concerned authorities have erred in confusing between the services rendered under the two agreements.

11. The petitioner claims that in terms of the Advisory following services:

"Identifying business opportunities, conducting market research and developing strategies for India and neighbouring regions on a global basis."

12. According to the petitioner, such services do not qualify as intermediary services as there is no third party involved in rendering all these services. The petitioner contends that it neither facilitates nor arranges for supply of services from any third party. The petitioner claims that the said services are rendered on principal-to-principal basis.

13. According to the petitioner, the question involved in the present petition is covered by the recent decision of this Court in M/s Ernst & Young Ltd. v. Additional Commissioner, CGST Appeals-II, Delhi & Anr.: 2023:DHC:2116-DB.

14. We have heard the learned counsels for the parties.

15. There is merit in the contention that the services relating to market research and developing strategies cannot be classified as intermediary services. However, there is a serious controversy as to the exact nature of services rendered by the petitioner. In the given circumstances, it was contended by the counsels that the matter be remanded to the Adjudicating Authority to decide afresh keeping in view the decision of this Court in M/s Ernst & Young Ltd. v. Additional Commissioner, CGST Appeals-II, Delhi & Anr. (supra). The said course commands to us.

16. Insofar as the impugned order dated 23.03.2022 passed by the Appellate Authority is concerned, the Appellate Authority had rejected the petitioner's appeal against partial rejection of the claim for refund on the ground that the petitioner had not produced any documentary evidence to establish the actual eligible turnover for zero rated supplies.

the applications filed by the petitioner for refund for the Financial Years 2018-19 and 2019-20 are restored before the Adjudicating Authority for considering afresh in light of the decision of this Court in M/s Ernst & Young Ltd. v. Additional Commissioner, CGST Appeals-II, Delhi & Anr. (supra).

18. The petition is disposed of in the aforesaid terms. The pending application is also disposed of.

VIBHU BAKHARU, J AMIT MAHAJAN, J MAY 1, 2023 'gsr'

# Meena Kumari vs Bhagwant Prasad Sharma And Anr on 27 February, 2023

**Author: Prathiba M. Singh**

**Bench: Prathiba M. Singh**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ W.P.(C) 2445/2023&CM APPLs. 9348/2023, 9349/2023  
MEENA KUMARI ..... Petitioner  
Through: Mr. A. K. Dubey and Mr. Pawan  
Kumar, Advocates. (M: 7838122354)  
versus  
BHAGWANT PRASAD SHARMA AND ANR. ..... Respondents  
Through: None.  
CORAM:  
JUSTICE PRATHIBA M. SINGH  
ORDER

% 27.02.2023

1. This hearing has been done through hybrid mode. CM APPL.9348/2023 (for exemption)
2. Allowed, subject to all just exceptions. Application is disposed of. W.P.(C) 2445/2023 & CM APPL.9349/2023
3. The present petition has been filed by the Petitioner- Smt. Meena Kumari, seeking the quashing of the following two orders
  - (i) Order dated 4th November, 2022, passed in Ref. No. PA/DIV.COMM./APPEAL No. 281/2021/598-601, by the Appellate Court of Divisional Commissioner, Department of Revenue, Government of NCT of Delhi (GNCTD) in the case titled 'Meena Kumari v. Bhagwant Prasad Sharma & Ors.'
  - (ii) Order dated 31st March, 2021, passed in Ref. No. F.PA/DC/NE/48/2019/6067-6071 by the the Appellate Court of Divisional Commissioner, Department of Revenue, GNCTD in the case titled 'Bhagwant Prasad v. Manoj Sharma & Anr.'
4. Ld. counsel for the Petitioner submits that the impugned orders would be liable to be stayed on the strength of the judgment of the Supreme Court in S. Vanitha v. Deputy Commissioner, 2020 SCC OnLine SC 1023 and Sanjay Walia v. Sneh Waliya, 2013(204) DLT 618. The Petitioner further contends that her husband is part owner of the property after the demise of his mother, Smt. Kitaba Devi.

5. Shri Bhagwant Prasad Sharma, who is father of Mr. Manoj Sharma, had filed the eviction petition under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 before the District Magistrate, North East District, GNCTD ('DM'). The DM vide order dated 13th November, 2020 directed the eviction of the Petitioner as also her husband. The relevant extracts of the said order dated 13th November, 2020 issued by the DM is extracted as under:

"Now, even if the undersigned authority consider the plea of opposite party, Meena that eviction order should not be passed for concern of opposite party(s) and minor kid and if this plea is allowed to be considered then subsequently in every such case the elder parents will have to face burden of their son(s) and daughter in law, and legal heir for non-maintenance and ill- treatment and no order for eviction would be passed. This is not the Scheme of the present act and it is meant for Maintenance and welfare of parents and senior citizens. The Senior citizens do have a right to enjoy peaceful possession of property which is protected under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (as amended up to date) act and rules under Delhi Maintenance and Welfare of Parents and Senior Citizens Rules (Amendment) Rules, 2016.

In view of the above, I am of the view that since this is a case of ill- treatment and misbehavior with the applicant by the opposite parties, it would be appropriate to pass an eviction order against the opposite party(s) Meena. As per records, the minor kids are living with support of parents i.e. opposite parties and present order of eviction which is passed against parents is also applicable to minor kid, in the light of settled legal position as discussed in Writ Petition. (C) 347/2013, AARSHYA GULATI (THROUGH: NEXT FRIEND MAS, DIVYA GULATI) AND ORS. versus GOVERNMENT OF NCT OF DELHI AND Ors decided by Hon'ble High court of Delhi vide order dated 30.05.2019.

I, therefore, in exercise of the powers conferred upon me under The Delhi Maintenance and Welfare of Parents and Senior Citizens (Amendment) Rules, 2016 & The Delhi Maintenance and Welfare of Parents and Senior Citizens (Amendment) Rules, 2017, hereby direct the opposite parties namely Smt. Meena to vacate the part of property in question i.e. H.No-D-7/74, Dayaipur, Karawal Nagar, Delhi-110094 within 30 days from the date of this order and handover the vacant and peaceful possession to the applicant.

[ As discussed above, the present order does not contain any finding w.r.t elder son of applicant i.e. Manoj qua application seeking eviction on ground of Non-maintenance and Ill-treatment. However, applicant reserves his right to proceed against his elder son if he came to India and make any effort to interfere in peaceful enjoyment of property of applicant in near future.

Further, it is mentioned that the undersigned authority decided the application on the basis of documents filed by parties and consider the appropriate that application

succeed to prove his case and entitle to such relief prescribed under Senior citizen act/rules. The present order does not resist or prevent parties from seeking relief before any court or any other authority.

The Deputy Commissioner of Police, District North-East shall take coercive measures to enforce the eviction order through SHO concerned to handover the possession of property-in-question to the applicant within 07 days, if the opposite parties failed to evict the premises on her own within the time specified as above. A compliance report of the same will be filed thereafter. The file be consigned to record room."

6. The finding of the DM, who sought for the report from the Tehsildar, is that the Respondent has been subjected to ill-treatment by the Petitioner. It was also recorded by the DM in the order dated 13th November, 2020 that the revenue officials in their report had confirmed that there was ill treatment on behalf of the opposite party. Further, in the said order, the SDM- Karawal Nagar recorded that the husband of the Petitioner is working in Muscat, Oman since 2008 and has been earning well there. Accordingly, the DM directed the SHO concerned to get the property evicted within seven days.

7. This order of the DM was challenged before the Divisional Commissioner, who has also, vide order dated 4th November, 2022, upheld the orders of the DM. The operative portion of the said order is extracted as under:

9. Keeping on view the facts and circumstances of the case, as there is no matrimonial dispute among the appellant and respondent no. 2, thus appellant has not been protected by the Judgment of S. Vanitha and has no right to reside in the suit property against the wishes of the respondent no. 1. Also it is an admitted fact that the respondent no.1 filed Civil Suit for injunction and another under Indian succession Act which are pending before the Hon'ble Civil Courts which shows that the eviction application is not in collusion with respondent no. 2, otherwise also from the case of appellant herself it is clearly evident that there is no matrimonial dispute among the appellant and her husband respondent no. 2.

The Hon'ble Delhi High Court in Darshna Vs. The Govt. of NCT of Delhi & Ors. held that "In the present case, excluding daughter-in-law from the scope of Rule 22(3)(2)(1) of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 as amended would debilitate the provisions of the Rules and render it incapable to serve the object of Section 22 of the Act. It is difficult to accept that although a senior citizen is entitled to evict his/her son who is maltreating him, he/she has no option but to suffer the ill-treatment at the hands of his/her daughter-in-law. Accordingly, there is no infirmity in the impugned order dated 13.11.2020 and the appeal is hereby dismissed being devoid of merits.

The Appeal stands disposed off accordingly. Copy of this order be provided to both parties. Record of the Proceedings before DM (North-East) be also sent back to DM with copy of this order.

8. Issue notice. The challenge to the order dated 4th November, 2022 passed by the ld. Divisional Commissioner has been listed today for the first time. Considering the fact that the Respondent No.2 i.e., the husband of the Petitioner is earning well and located in Muscat, Oman as also the concurrent findings of ill-treatment, this Court is not inclined to grant interim relief. If required, some alternate premises could be arranged for the Petitioner through her husband for the purpose of residence of herself and her two children. For the said purpose, the Petitioner has been directed to serve the copy of the petition to the Respondent Nos.1 and 2 through email as well.
9. Under these circumstances, if there are any coercive steps taken by the police for evicting the petition, the Petitioner is free to approach this Court by way of an application.
10. List on 17th March, 2023 at the top of the Board.

PRATHIBA M. SINGH, J FEBRUARY 27, 2023 dk/am

# **Mohd.Imran Khan & Ors vs The State (Gnct Of Delhi) And Anr on 7 March, 2023**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ CRL.M.C. 1598/2023, CRL.M.A. 6068/2023 & CRL.M.A. 6069/2023  
MOHD. IMRAN KHAN & ORS. .... Petitioner  
Through: Ms. Vandana Dhoundiyal, Adv.  
alongwith petitioners.  
versus

THE STATE (GNCT OF DELHI) AND ANR. .... Respondents  
Through: Ms. Richa Dhawan, APP for the State  
with SI Anjani Kumar Singh, PS  
Wazirabad.  
Mr. Rohit Baisla, Adv. for R-2  
alongwith R-2.

CORAM:  
HON'BLE MR. JUSTICE ANISH DAYAL  
ORDER

% 07.03.2023 CRL.M.A. 6068/2023 (Exemption)

1. Exemption is allowed subject to all just exceptions.

2. Application is disposed of.

1. This petition has been filed for quashing of the FIR No.365/2019 registered under Sections 420/448/380/120-B IPC at PS Wazirabad, Delhi, on the ground that the parties have settled their disputes which arose out of a property dispute inter-se between the parties and which has now been resolved. The copy of the Settlement dated 06.03.2021 is on record of this Court. The petitioner nos.1 - 3 and respondent no.2/complainant are present in the Court, duly identified by the respective counsels and the IO and confirm the factum of the settlement and resolution of their disputes.

2. Considering the above settlement between the parties and the chances of conviction of the petitioners being remote and bleak, there is no use continuing with proceedings of the present FIR as it would be a misuse of the process of the Court and an unnecessary burden on the State exchequer. Accordingly, the petition is allowed. Consequently, the FIR No.365/2019 registered under Sections 420/448/380/120-B IPC at PS Wazirabad, Delhi, and proceedings emanating therefrom are quashed. Parties shall abide by the terms of settlement.

3. Accordingly, the petition is disposed of. Pending applications, if any, are disposed of as infructuous.

4. Order be uploaded on the website of this Court.

ANISH DAYAL, J MARCH 7, 2023/kct

## Ms. M Prosecutrix vs State Of Nct Of Delhi & Ors on 5 April, 2023

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ TR.P.(CRL.) 6/2023 & CRL.M.A. 1007/2023

MS. M PROSECUTRIX ..... Petitioner

Through: Appearance not given.

versus

STATE OF NCT OF DELHI & ORS. ..... Respondents

Through: Mr. Ritesh Kumar Bahri, APP for the  
State.

Mr. Gurpreet Singh, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

% 05.04.2023

1. Pursuant to the previous orders of this Court where the learned counsel for the petitioner had adverted to Section 26 Clause A (III) of Cr.P.C. and second proviso to sub-Section 327(2) of Cr.P.C. as well as the directions of the Hon'ble Supreme Court in Re: Assessment of the Criminal Justice System in Response to Sexual Offences, SMW (Crl) No. 04/2019, the Ld. APP has filed a status report in that regard.

2. As per the status report, facts of complaint have been stated which are essentially allegations of misuse of complainant's photographs on a porn site. It is stated that pursuant to the FIR the accused was arrested on 11th November, 2020 and the laptop of the accused was seized already in a previous matter. The matter is now before the Ld. Trial Court and listed for arguments on charge and other proceedings. The petitioner has contended that the proceedings should be presided over by a female Judge and not a male Judge in light of the above provisions and judgment.

3. A perusal of the said provisions would show that there is no inflexible mandate as regards the trial of matters under Section 376 IPC to be dealt with by a Court presided over by a woman judge. Section 26 (a)(iii) proviso categorically provides that offences mentioned in the said proviso (inter alia section 376 IPC) shall be tried "as far as practicable" by a Court presided over by a woman. The Hon'ble Supreme Court in the decision referred to above, has adverted to this provision in para 17 of the said order as also to the second proviso to sub-section 327 (2) Cr.P.C. (which provides that in camera trial shall be conducted as far as far as practicable by a Court presided over by a woman judge or magistrate) and observed that "insertion of the above proviso has a very important object and the rider of 'as far as practicable' cannot be used to overcome the mandate in an ordinary manner."

4. Learned counsel for the petitioner has relied on this observation of the Hon'ble Supreme Court to state that the trial pursuant to the complaint (in SC No.53/2021 under sections 376, 354A, 387 IPC and sections 66 E and 67 A of the Information Technology Act) may be transferred to a newly created court of the ASJ (POCSO) which are presided over by a lady judge. As per the averments in

the petition, in support of this plea, it is stated that the prosecutrix does not feel comfortable while appearing before the Court and the Ld. Presiding Officer has been insensitive.

5. Further reliance has been placed on the decision of the Hon'ble Supreme Court in Nipun Saxena & Anr. V. UOI to contend that fast track (POCSO) courts have been created for trial of cases under the POCSO Act and these courts may not only be used for trying cases under POCSO Act but also for trying cases against women. As per the petitioner, these submissions were made before the Ld. Presiding Officer who was not only reluctant but adamant not to hear these submissions in this regard.

6. Be that as it may, mere apprehension of the petitioner (which can be subjective) cannot become a ground for transfer of cases to POCSO courts even though the offence does not involve provisions of POCSO Act. This would create a precedent which would open floodgates where all cases being tried for offences under section 376 IPC would be required to be transferred to special courts dealing with POCSO and/or presided by a woman judge. Even though this may be ideally desirable in the overall administration of justice (as stated by the Hon'ble Supreme Court), at this stage when no such directions have been passed on the administrative or judicial side for a carte blanche mandate, a transfer may potentially create difficulties in administration of justice, allocation and preservation of jurisdictions. Besides, as contended by the Ld. APP, the grounds stated by the petitioner do not come within the purview of the conditions for transfer under section 407 Cr. PC.

7. It is of course expected that the Ld. Presiding Officer, be it male or female, are expected to handle such cases in a sensitive manner having due regard to directions passed by the Hon'ble Supreme Court and this Court inter alia while dealing with cases involving women and / or children and/or sexual offences. In this context, it may be appropriate to remind ourselves of the famous aphorism : "Justice must not only be done, but must also be seen to be done".

8. The petition is disposed of with these observations.

9. Order be uploaded on the website of this Court.

ANISH DAYAL, J APRIL 5, 2023/MK/sm

# Paras Ram Dangal Society vs Estate Officer -IV Dda And Anr on 17 February, 2023

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ W.P.(C) 1980/2023 & CM APPLs. 7554/2023 & 7555/2023

PARAS RAM DANGAL SOCIETY .....

Petitioner

Through: Ms. Deepika V. Marwaha, Sr.

Advocate with Ms. Stuti Gupta,

Ms. Raunika Johar and Mr. Faiz

Khan, Advocates

(Ph. 9560493552, e-mail:

lexalliance.stuti@gmail.com).

versus

ESTATE OFFICER -IV DDA AND ANR ..... Respondents

Through: Ms. Mrinalini Sen, Standing

Counsel for DDA with Mr.

Shantanu Lakhotia, Advocate

(Ph. 9873367274, e-mail:

mrinalinigupta@gmail.com)

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER

% 17.02.2023 [Physical Hearing/ Hybrid Hearing]

1. This is an application seeking exemption from filing true typed copies of the dim and/ or improperly formatted and/ or certified copies of the documents / annexures filed along with the accompanying writ petition.

2. Exemption allowed subject to just exceptions. Application is disposed of.

W.P.(C) 1980/2023 and CM APPL. 7554/2023 (for ad-interim stay)

3. The present writ petition has been filed seeking prayer for setting aside the order dated 06.12.2022 passed by the ld. Principal District and Sessions Judge (HQ), Tis Hazari Courts, Delhi in PPA No. 03/2017. By way of the said order dated 06.12.2022, the district court has dismissed the appeal of the petitioner herein against order dated 21.01.2010 passed by the Estate Officer on the ground of delay of 2568 days, which was not condoned as recorded in the impugned order.

4. As per the petition, petitioner Society was formed in 1959 for promoting wrestling and was founded by renowned wrestler late Guru Chiranjit Lal. The petitioner society was allotted property admeasuring about 1864 Sq. yds by virtue of indenture of lease dated 07.01.1967 executed by the President of India through Land and Development Office, (L&DO) New Delhi, for purpose of promoting the ancient art of wrestling. The supervisory powers vested in the L&DO were transferred

by it in favour of respondent No.2, DDA. Hence, as of today the respondent No.2 is the governing authority/lessor as far as the property in question is concerned.

5. It is the case of the petitioner that the petitioner Society continued to be in uninterrupted possession of the said originally leased property in question w.e.f. 1934 to 1986. Sometime around in 1986, Government requested the petitioner to handover certain portion of the property in question, i.e., land measuring 1234 Sq. Yds as the same was required by the Government for construction of ISBT flyover. Thus, petitioner handed over the area measuring about 1234 Sq. yds. Subsequently, the Public Works Department (PWD) vide letter dated 24.02.1988, called upon the petitioner for collecting part compensation cheque in lieu of acquired land and demolished structure.

6. It is submitted that Deputy Director (Lands), DDA issued a letter dated 03.03.1988 to Deputy Director (Hort.) II, DDA with respect to temporary allotment of land measuring 1180 Sq. Yds. to the petitioner adjacent to the earlier site of the petitioner for wrestling on payment of license fee. The petitioner paid the requisite license fees to the authorities, which was duly acknowledged vide letter dated 03.08.1990.

7. This Court in a Public Interest Litigation (PIL) titled as Wazirpur Bartan Nirmata Sangh vs. UOI & Ors., bearing W.P.(C) No.2112/2002, vide order dated 16.11.2005, constituted a Committee to remove encroachment and to clear the Yamuna Bed and its embankment. Further, vide order dated 08.12.2005, directions were given to the committee to take steps for removing encroachment upto 300 meters from both the sides of river Yamuna. In view of the various directions issued by this Court in W.P. (C) 2112/2002, the respondents sought to demolish the structures on the property of petitioner.

8. This led to the petitioner filing an application before this Court for impleadment. The petitioner gave an undertaking before this Court that the entire structure would be removed, except one room for the caretaker, considering the cause of clearing the Yamuna Bank. It is submitted that the undertaking given by the petitioner was duly complied and the petitioner itself removed the entire structure on the property in question.

9. It is submitted on behalf of the petitioner that as recorded in order dated 11.10.2006 in W.P.(C) No. 2112/2002, petitioner made a statement that it did not wish to press its application for impleadment, however, it should be given similar treatment as given to other Akharas. Thus, the Committee constituted by this Court recommended that in view of the land being used by the Akhara, they should be given some alternative place by the DDA. This Court directed that DDA must have some policy and if it does not have such a policy, they must formulate a policy to accommodate the Akhara in question.

10. Since the DDA failed to formulate any policy to accommodate the petitioner in terms of order dated 11.10.2006 in W.P.(C) 2112/2002, petitioner filed a contempt petition against respondent No.2. In the contempt proceedings, the petitioner was permitted to run the Akhara on the existing land in a manner that it does not disturb the ecology of river Yamuna.

11. In the meanwhile, the DDA also initiated proceedings under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (PP Act), against the petitioner herein. It is the case of the petitioner that the petitioner participated in the proceedings before the Estate Officer. When the matter was listed before the Estate Officer on 28.05.2009, the petitioner appeared and apprised the Estate Officer about the orders passed by this Court in the contempt proceedings.

12. It is the case of the petitioner that the petitioner appeared before the Estate Officer on 15.01.2010 and filed its reply to the demand letter of the petitioner. The Estate Officer recorded in his proceedings that the reply has been filed on behalf of petitioner herein. Subsequently, when the matter was listed on 21.01.2010, the Estate Officer held that since no one had appeared on behalf of the petitioner, the matter is proceeded ex parte and thus decided the case on merits without hearing the petitioner. Thus, by order dated 21.01.2010, the Estate Officer passed an order for payment of damages by the petitioner herein for the period from 15.07.1987 to 31.08.2006, totalling to Rs. 34,90,145/- . The said order further states that order in Form 'G' be issued, which as per ld. Counsel for the petitioner pertains to format of ex parte proceedings.

13. It is submitted that the petitioner received the notice with respect to demand pursuant to order of the Estate Officer and the order dated 21.01.2010 passed by the Estate Officer, only by notice dated 18.06.2010. The petitioner made a representation to the Estate Officer on 05.07.2010, thereby enquiring about the basis of levy upon the petitioner. Subsequently, the petitioner issued a notice to the respondent on 10.07.2010, stating that the order dated 21.01.2010 was passed without the knowledge of the petitioner and without considering the reply filed on behalf of the petitioner.

14. It is the case of the petitioner that the DDA provided certified copy of the proceedings to the petitioner on 26.08.2010. It was at that time that the petitioner came to know that the Estate Officer had passed ex parte order against the petitioner without considering the reply filed on behalf of the petitioner and despite the fact that the petitioner had been regularly attending the matter. The petitioner met the senior officials of DDA on 06.12.2010, when the petitioner was directed to give representation. The petitioner thereafter gave detailed representation dated 08.12.2010. The representation of the petitioner was considered and it was informed that the recovery proceedings have been stopped and the matter is under review. Thereafter, the petitioner did not receive any communication with respect to the status of representation of the petitioner or with respect to any recovery.

15. Ld. Senior Counsel appearing for the petitioner has relied upon the file noting of the DDA dated 10.12.2010, wherein it had been recorded that the recovery proceedings against the petitioner had been stopped and the matter was under review. It is submitted that the said file noting was made in the presence of the petitioner. The file noting dated 10.12.2010 of the DDA as attached with the present petition, is reproduced as under:

"This is a matter of recovery of damages/arrears of land revenue M/s Vikram Vashisth President ParshuRam Dangal Society. As per N.R.C. received from Collector (Nazul) in respect of M/s Vikram Vashisth President ParshuRam Dangal Society Ghat No. 13, KudasiaGhat, Bela Road, I.S.B.T amounting to Rs.34,90,145/-

The defaulter so called society has moved a representation dated 8.12.10 challenging the amount mentioned in the N.R.C. The matter was placed before the Collector (Nazul), the defaulter was also present during the discussion. The matter was briefed to Collector (Nazul), that the matter is still pending before the E.O IV E.O. IV has given in writing to the defaulter that the recovery proceeding be stopped. The matter is under review....."

16. It is the case of the petitioner that it pursued the matter with the concerned senior officials of DDA and the petitioner was made to believe that the matter stood closed. Since the petitioner again received notice from DDA for 14.10.2013 and 02.05.2014, the petitioner appeared before DDA and sought time. Thus, the petitioner again made representation on 01.12.2014 to the DDA thereby requesting for withdrawing the demand notices issued to the petitioner. It is submitted that there was no communication from respondents for almost two years.

17. Subsequently, petitioner came to know that DDA had written to the Police on 30.11.2016 that it will carry out demolition on the property of the petitioner. Thereafter, the petitioner deposited Rs. 7 Lakh with the DDA and also submitted an affidavit dated 22.12.2016 with the DDA that the petitioner shall deposit the rest of the amount in instalments. It is the contention on behalf of the petitioner that the same was done under duress.

18. Thereafter, petitioner moved application under RTI Act and obtained various documents from DDA. Subsequently, petitioner filed a writ petition being W.P.(C) 1210/2017 before this Court. The said petition was dismissed as withdrawn vide order dated 10.02.2017 thereby granting liberty to the petitioner to file appeal under the PP Act before the competent authority.

19. Pursuant to the aforesaid, petitioner filed an appeal under Section 9 of the PP Act challenging the order dated 21.01.2010 passed by the Estate Officer. By the impugned order dated 06.12.2022, the appeal filed on behalf of the petitioner was dismissed thereby dismissing the application of the petitioner herein for condonation of delay in filing the said appeal. Hence, present writ petition has come to be filed.

20. Ld. Senior Counsel for the petitioner submits that the petitioner had justified the delay in filing the appeal under Section 9 of the PP Act, therefore, the said delay ought to have been condoned. It is submitted that there were sufficient grounds to condone the delay and hear the matter on merits. She submits that limitation is a mixed question of facts and law, therefore the District Court ought to have considered the facts of the present case, which it refused to consider.

21. She submits that finding by the ld. District Court is contrary to record. Attention of this Court has been drawn to para 15 of the impugned order, wherein it has been recorded that the petitioner herein concealed the records pertaining to deposit of Rs. 7 Lakh with the DDA and the fact that an affidavit had been submitted by the petitioner with the DDA undertaking to pay the balance amount in six equal monthly instalments. It is submitted that the said finding by the ld. District Court is wrong, as the petitioner herein had clearly mentioned about the payment of the amount of Rs. 7 lakh to the DDA in para 46 of the appeal filed before the District Court. It is further submitted that the affidavit submitted before the DDA by the petitioner was also duly filed along with the appeal.

22. Ld. Senior Counsel for petitioner further submits that though in para 6 of the impugned judgment, the various judgments as relied upon by the petitioner herein were mentioned, however, the same were not discussed.

23. It is submitted that by way of order dated 21.01.2010, the Estate Officer had allowed a time barred claim, passing the order as an ex parte order, despite the fact that the petitioner herein had been appearing before the Estate Officer. The DDA had filed its reply before the District Court and had not raised the plea of limitation therein. It is submitted that the DDA has already taken Rs. 10 lakh from the petitioner herein.

24. Ld. Senior Counsel for the petitioner has also relied upon order dated 14.03.2017 passed by the District Court, wherein the interim protection as granted in favour of the petitioner herein on 14.02.2017 was confirmed till disposal of the appeal. The order dated 14.03.2017 passed by the District Court is reproduced as below:

"Paras Ram Dangal Society Vs. Estate Officer IV 14.3.2017 Present: Sh. Gaurav Tanwar, Advocate for appellant.

None for the respondent.

Be awaited.

(Dr. Kamini Lau) ADJ-02, Central/14.3.2017 11.10 AM Present: None for the appellant.

Sh. K.D. Sharma, Advocate for respondent. Heard arguments. Hon'ble Delhi High Court vide order dated 28.5.2009 has very specifically expressed concerns over the manner in which the DDA had singularly targeted the appellant and issued a notice to the appellant being unconcerned about other unauthorized encroachments made in the area by illegal occupants. Ld. Counsel for the respondent submits that he has no instructions from the department with regard to removal of other structures or issuance of notice to any other encroacher in the area and has instructions only to seek time for filing the reply. The record of Estate Officer is not received. The Estate Officer to appear in person on next date along with the relevant record. Under these circumstances, the interim protection granted on 14.2.2017 is confirmed till disposal of the appeal. Case be listed for reply, arguments and disposal of the appeal on 12.07.2017.

(Dr. Kamini Lau) ADJ-02, Central/14.3.2017"

25. Ld. Senior Counsel has also relied upon judgment passed by Hon'ble Supreme Court in the case of New Delhi Municipal Committee Vs. Kalu Ram and Ors., (1976) 3 SCC 107 to contend that Section 7 of PP Act cannot be resorted for recovering time barred debt or rent.

26. During the course of hearing, ld. Senior Counsel for petitioner relied upon the following judgments:

- I. New Delhi Municipal Committee Vs. Kalu Ram & Ors. (1976) 3 SCC 107 II.
- Collector, Land Acquisition, Anantnag and Ors. Vs. Katiji & Ors., (1987) 2 SCC 107
- III. Ajoy Bag @ Roy & Ors. Vs. Estate Officer, Calcutta Post Trust & Anr., 2011 SCC Online Cal 3854 IV. Krishan Pal & Ors. Vs. The Commissioner, Rohtak Division & Ors., MANU/SC/2068/2019

27. On the other hand, Ms. Mrinalini Sen, Standing Counsel for DDA has vehemently opposed the present petition. She submits that under proviso to Section 9 (2) of PP Act, condonation of delay can be done only in exceptional circumstances. The petitioner has not been able to show any exceptional circumstances, and thus, delay in filing the appeal against the order of the Estate Officer, has rightly not been condoned.

28. She submits that the petitioner has not been able to justify or explain the delay and mere representations made on behalf of the petitioner will not have the effect of extending the period of limitation. The conduct of the petitioner has been indolent and it was for the petitioner to pursue its remedies properly.

29. It is further submitted that the contention of the petitioner that it deposited Rs. 7 lakh with the DDA under coercion and submitted affidavit dated December 2016 to the DDA under duress, is absolutely wrong and denied. No one from the DDA directed the petitioner to deposit any amount or submit such affidavit. The petitioner itself deposited the amount and submitted the affidavit that it will deposit rest of the amount in instalments, since the petitioner accepted the order passed by the Estate Officer. Therefore, the petitioner cannot now go back upon the same after having accepting the order of the Estate Officer.

30. It is further submitted that the land occupied by the petitioner is prime land and that the petitioner is not even paying the basic licence fee. The petitioner has not been able to discharge the onus upon it to bring its case within exceptional circumstances, as envisaged under Section 9 of the PP Act for condoning delay in filing the appeal.

31. Ld. Counsel for the respondent has relied upon the following judgments:

- i. S.D. Bandi Vs. Divisional Traffic Officer, Karnataka State Road Transport Corporation and Others, (2013) 12 SCC 631 ii. Jatinder Singh Chawla Vs. Delhi Development Authority And Anr., 2022/DHC/003657 iii. Rajabhau Vs. Divisional Railway Manager, Central Railway and Ors., MANU/MH/3191/2019

32. I have heard ld. Counsels for the parties and perused the documents on record.

33. At the outset, it would be useful to refer to the order dated 21.01.2010 passed by the Estate Officer, which is reproduced as below:

"IN THE COURT OF ESTATE OFFICER I & IV, DELHI DEVELOPMENT AUTHORITY, VIKAS SADAN, NEW DELHI Case/File No. D-2(38)06/Damage DDA Vs. VikramVashistha, Paras Ram Dangal Society Ghat No.13, Kudsia Ghat, Bela Road, Near ISBT, Delhi ORDER Case Called DDA Counsel present, Respondent Sh. VikramVashistha is not present today inspite of service of the show cause notice and acknowledgment of the date. In the circumstances, I am compelled to take ex-parte proceedings against the respondent and proceed to decide the case on merits.

No written objection have been filed on behalf of the respondent. I accordingly assess him/her/them to pay damages for 1180 sq. yards of Nazul land being used for residential/ commercial purposes bearing property/ Kahsra/ House No. situated in Near ISBT, revenue estate Delhi for the period from 15.7.87 to 31.8.2006 at the rate of Rs. - totalling Rs. 34,90,145/- which I hereby confirm.

The rates at which the respondent has been assessed to damages are quite reasonable keeping in view the rental value prevailing in the locality. The above said amount will be payable by the respondent in lump sum within a month, failing which it shall be recovered along with simple interest @18% per annum as arrears of land revenue.

Order in Form „G“ be issued accordingly.

Sd/-

Estate Officer DDA 21.1.2010"

34. Perusal of the aforesaid order clearly shows that despite the petitioner having appeared before the Estate Officer on previous occasions and also having filed its reply, the Estate Officer proceeded ex parte against the petitioner and passed the impugned order without hearing the petitioner. Further, it may be noted that the said order dated 21.01.2010 passed by the Estate Officer pertains to only an order of damages in favour of DDA, though the petition filed by the DDA was for eviction as well as damages, under Sections 4 and 7 of the PP Act. Thus, no eviction order has come to be filed against the petitioner. In view thereof, fact remains that there is no eviction order against the petitioner as on date. It is not even the submission on behalf of the DDA that any eviction order has been passed against the petitioner.

35. It is also noted that by order dated 21.01.2010, the Estate Officer has not disposed of the proceedings initiated by the DDA. Upon query by this Court as regards whether the said proceedings had been concluded by the Estate Officer by way of the said order dated 21.01.2010, the Standing Counsel for DDA was unable to answer the same in the absence of requisite instructions in that regard.

36. Considering the various issues raised before this Court, it is held that the matter requires consideration.

37. Issue notice. Notice is accepted by Ld. Standing Counsel for DDA. Let reply be filed within four weeks. Rejoinder thereto, if any, be filed within two weeks thereafter.

38. This Court has considered the fact that the petitioner herein has enjoyed interim protection in its favour from 2017 till 06.12.2022, till the disposal of the appeal by the District Court.

39. In view of the submissions made before this Court and after considering the documents on record, it is directed that no coercive steps shall be taken against the petitioner till the next date of hearing, subject to the petitioner herein depositing an amount of Rs. 2 lakhs with the DDA within four weeks from today.

40. List for hearing on 28.04.2023.

MINI PUSHKARNA, J FEBRUARY 17, 2023/au

# **Savronik Sistem India Private Limited vs Northern Railways & Anr on 23 March, 2023**

**Author: Yashwant Varma**

**Bench: Yashwant Varma**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

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+ ARB.P. 709/2022

SAVRONIK SISTEM INDIA PRIVATE LIMITED

..... Petitioner

Through: Mr. Satvik Varma, Sr. Adv.  
with Mr. Tushar Mudil, Mr.  
Manoj Kumar & Ms. Sukhmani  
Kaur, Advs.

versus

NORTHERN RAILWAYS & ANR. .... Respondents

Through: Mr. Subhash Tanwar, CGSC,  
and Mr. Sandeep Mishra, Adv.

10

+ ARB.P. 712/2022

SAVRONIK SISTEM INDIA PRIVATE LIMITED

..... Petitioner

Through: Mr. Satvik Varma, Sr. Adv.  
with Mr. Tushar Mudil, Mr.  
Manoj Kumar & Ms. Sukhmani  
Kaur, Advs.

versus

NORTHERN RAILWAYS & ANR. .... Respondents

Through: Mr. Subhash Tanwar, CGSC,  
and Mr. Sandeep Mishra, Adv.  
for UOI

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

ORDER

% 23.03.2023

1. With the consent of parties these two petitions preferred under Section 11 of the Arbitration and Conciliation Act, 1996 are proposed to be disposed of in terms of the present common order. The the Act By:NEHA Signing Date:29.03.2023 20:01:05 instant petitions arise out of disputes emanating from Contract Nos. 942 and 1016 and the failure of parties to concur on the constitution of an Arbitral Tribunal. For the sake of brevity the Court proposes to notice the following essential facts as forming part of ARB.P. 709/2022.

2. The respondent IRCON International Limited is stated to have floated a tender in April 2014 for execution of works described as "Comprehensive Operation and Maintenance Work of 11 KV, Ventilation, Electro Mechanical (E&M), Telecontrol [SCADA] and Telecom System for PIL PANJAL Tunnel T-80 on Dharam-Qazigund Section of USBRL Project (J&K)(Package- T-80, COMC)". According to the petitioner, the work assigned under both the contracts had been completed well within time and the respondent had also acknowledged the same in terms of its internal communication dated 28 June 2017 purporting to record a satisfactory completion of work on 14 September 2016 and for consequential release of Bank Guarantees which had been held.

3. From the record it would appear that sometime in the month of September 2017 an FIR came to be registered with Police Station CBI Srinagar against the Directors of the petitioner and certain other railway officials of having overcharged under different heads in the course of execution of those contracts. The respondent, consequent to the said criminal case coming to be registered are stated to have withheld payments, Completion Certificates and Defect Liability Certificates.

4. By a letter of 05 October 2017, the petitioner demanded various sums in terms of the final bill dated 15 September 2016 as well as the release of amounts held under the head of Retention Money. Since the disputes in respect of the aforesaid issues could not be resolved, the petitioner served a notice dated 08 April 2021 invoking arbitration.

The petitioner, as would be evident from a reading of the aforesaid communication, also appears to have raised a challenge to the constitution of the Arbitral Tribunal in terms of Clause 64 of the General Conditions of Contract<sup>2</sup> and in terms of which a Tribunal was to comprise of either three gazetted railway officers or two railway gazetted officers and one retired railway officer.

5. Responding to the aforesaid notice, the petitioner vide a letter dated 29 October 2021 was called upon to choose a name out of a panel of four retired railway officers suggested by the respondent. The petitioner in terms of its reply of 24 November 2021 disputed the eligibility and raised a doubt with respect to the impartiality and independence of the arbitrators proposed.

6. By the same communication, petitioners proceeded to nominate an arbitrator on its behalf and further called upon the respondents to communicate their nomination within 15 days from the date of receipt of this notice . The aforesaid action was declined by the respondent who reiterated that the panel would have to be constituted in terms of the GCC.

7. It becomes pertinent to note that the respondent in terms of its letter of 30 December 2021 again referred to Clause 64(3)(a)(ii) of the GCC and reiterated its insistence of the Arbitral Tribunal comprising of three gazetted railway officers. It was further asserted that the procedure of nomination suggested by the petitioner would clearly be violative of the arbitration agreement and therefore the request of the petitioner made in that regard cannot be acceded to. It is in the aforesaid backdrop that the instant petition under Section 11 came to be instituted.

8. Before proceeding further, it would be apposite to extract Clause 64 insofar as it deals with the appointment and constitution of GCC By:NEHA Signing Date:29.03.2023 20:01:05 the Arbitral

Tribunal.

"64.(3) Appointment of Arbitrator:

64.(3) (a)(i) In cases where the total value of all claims in question added together does not exceed Rs. 25,00,000 (Rupees twenty five lakh only), the Arbitral Tribunal shall consist of a Sole Arbitrator who shall be a Gazetted Officer of Railway not below JA Grade, nominated by the General Manager. The sole arbitrator shall be appointed within 60 days from the day when a written and valid demand for arbitration is received by GM.

{Authority : Railway Board's letter no. 2012/CE-I/CT/ARB./24, Dated 22.102/05.11.2013}

64.(3) (a)(ii) In cases not covered by the Clause 64(3)(a)(i), the Arbitral Tribunal shall consist of a Panel of three Gazetted Railway Officers not below JA Grade or 2 Railway Gazetted Officers not below JA Grade and a retired Railway Officer, retired not below the rank of SAG Officer, as the arbitrators. For this purpose, the Railway will send a panel of more than 3 names of Gazetted Railway Officers of one or more departments of the Railway which may also include the name(s) of retired Railway Officer(s) empanelled to work as Railway Arbitrator to the contractor within 60 days from the day when a written and valid demand for arbitration is received by the GM.

Contractor will be asked to suggest to General Manager at least 2 names out of the panel for appointment as contractor's nominee within 30 days from the date of dispatch of the request by Railway. The General Manager shall appoint at least one out of them as the contractor's nominee and will, also simultaneously appoint the balance number of arbitrators either from the panel or from outside the panel, duly indicating the 'presiding arbitrator' from amongst the 3 arbitrators so appointed. GM shall complete this exercise of appointing the Arbitral Tribunal within 30 days from the receipt of the names of contractor's nominees. While nominating the arbitrators, it will be necessary to ensure that one of them is from the Accounts Department. An officer of Selection Grade of the Accounts Department shall be considered of equal status to the officers in SA grade of other departments of the Railway for the purpose of appointment of arbitrator.

64.(3) (a)(iii) If one or more of the arbitrators appointed as above refuses to act as arbitrator, withdraws from his office as arbitrator, or vacates his/their office/offices or is/are unable or unwilling to perform his functions as arbitrator for any reason whatsoever or dies or in the opinion of the General Manager fails to act without undue delay, the General Manager shall appoint new arbitrator/arbitrators to act in his/their place in the same manner in which the earlier arbitrator/arbitrators had been appointed. Such re-constituted Tribunal may, at its discretion, proceed with the reference from the stage at which it was left by the previous arbitrator (s).

64.(3) (a)(iv) The Arbitral Tribunal shall have power to call for such evidence by way of affidavits or otherwise as the Arbitral Tribunal shall think proper, and it shall be the duty of the parties hereto to do or cause to be done all such things as may be necessary to enable the Arbitral Tribunal to make the award without any delay. The Arbitral Tribunal should record day to-day proceedings. The

proceedings shall normally be conducted on the basis of documents and written statements.

64.(3) (a)(v) While appointing arbitrator(s) under Sub-Clause (i),

(ii) & (iii) above, due care shall be taken that he/they is/are not the one/those who had an opportunity to deal with the matters to which the contract relates or who in the course of his/their duties as Railway servant(s) expressed views on all or any of the matters under dispute or differences. The proceedings of the Arbitral Tribunal or the award made by such Tribunal will, however, not be invalid merely for the reason that one or more arbitrator had, in the course of his service, opportunity to deal with the matters to which the contract relates or who in the course of his/their duties expressed views on all or any of the matters under dispute.

64.(3) (b)(i) The arbitral award shall state item wise, the sum and reasons upon which it is based. The analysis and reasons shall be detailed enough so that the award could be inferred therefrom.

64.(3) (b)(ii) A party may apply for corrections of any computational errors, any typographical or clerical errors or any other error of similar nature occurring in the award of a Tribunal and interpretation of a specific point of award to Tribunal within 60 days of receipt of the award.

64.(3) (b)(iii) A party may apply to Tribunal within 60 days of receipt of award to make an additional award as to claims presented in the arbitral proceedings but omitted from the arbitral award."

9. It is the case of the respondent and one which is also set out in the reply that the appointment procedure must abide by Clause 64(3)(a)(ii) and the demand of the petitioner for appointment of persons outside the panel would clearly run contrary to the agreed procedure. It was also contended by the learned counsel appearing for the respondent that the validity of the appointment procedure, that is, appointment of retired railway officers as independent arbitrators has already been considered and upheld by the Supreme Court as would be evident from the conclusions drawn and recorded in Central Organisation for Railway Electrification v. ECI-SPIC-SMO-

MCML (JV)3.

10. Mr. Varma, learned senior counsel appearing for the petitioner however submitted that Central Organisation was dealing with Clause 64(3)(b) of the amended GCC and which clause had come to be altered pursuant to the amendments introduced in the Act by virtue of Act 3 of 2016 and more particularly to give effect to the introduction of Section 12(5) read with the Sixth and Seventh Schedules of the Act. Mr. Varma submitted that undisputedly the appointment of a gazetted railway officer would clearly be in violation of the prohibitions and disqualifications which stand enumerated in the Seventh Schedule and thus the appointment procedure as prescribed and envisaged under Clause 64(3)(a)(ii) is clearly unworkable. Learned senior counsel also submitted that the petitioner had also not waived off the applicability of sub-section (5) of Section 12 and consequently the unyielding stand taken on behalf of the respondent for the Tribunal to consist of gazetted officers is wholly untenable.

11. It would be apposite to note that clause 64(3)(a)(ii) stipulates that the Arbitral Tribunal shall comprise of either a panel of three gazetted railway officers or two gazetted railway officers along with one retired railway employee who retired as such from a position not lower than that of a Senior Administrative Grade. It further stipulates that for the purposes of constitution of the Arbitral Tribunal, the names of three gazetted railway officers would be forwarded to the contractor within 60 days from the receipt of a written and valid demand for arbitration. In terms of the said clause the contractor is asked to suggest at least two names to the General Manager and who in turn is thereafter empowered to appoint at least one out of them as the contractor's nominee. The General Manager is also obliged to simultaneously appoint the balance number of arbitrators either from (2020) 14 SCC 712 By:NEHA Signing Date:29.03.2023 20:01:05 the same panel or falling outside it and also duly including the name of the presiding arbitrator.

12. Contrary to Clause 64(3)(a)(ii), Clause 64(3)(b) which arose for consideration in Central Organisation reads as follows:-

"64.(3)(b) Appointment of arbitrator where applicability of Section 12(5) of the A&C Act has not been waived off The Arbitral Tribunal shall consist of a panel of three retired railway officers retired not below the rank of SAO officer, as the arbitrator. For this purpose, the Railways will send a panel of at least four names of retired railway officer(s) empanelled to work as railway arbitrator indicating their retirement date to the contractor within 60 days from the day when a written and valid demand for arbitrators is received by the GM.

Contractor will be asked to suggest to General Manager at least two names out of the panel for appointment as contractor's nominee within 30 days from the date of dispatch of the request by the Railways. The General Manager shall appoint at least one out of them as the contractor's nominee and will, also simultaneously appoint the balance number of arbitrators either from the panel or from outside the panel, duly indicating the "presiding arbitrator" from amongst the three arbitrators so appointed. The GM shall complete this exercise of appointing the Arbitral Tribunal within 30 days from the receipt of the names of contract's nominees. While nominating the arbitrators, it will be necessary to ensure that one of them has served in the Accounts Department."

13. The appointment procedure as contemplated in Clause 64(3)(b) was ultimately upheld by with the Supreme Court holding as follows:-

"37. Clause 64(3)(b) of GCC deals with appointment of arbitrator where applicability of Section 12(5) of the Act has not been waived off. In terms of Clause 64(3)(b) of GCC, the Arbitral Tribunal shall consist of a panel of three retired railway officers retired not below the rank of Senior Administrative Grade Officers as the arbitrators. For this purpose, the Railways will send a panel of at least four names of retired railway officers empanelled to work as arbitrators indicating their retirement date to the contractor within sixty days from the date when a written and valid demand for

arbitration is received by the General Manager. The contractor will be asked to suggest the General Manager at least two names out of the panel for appointment of contractor's nominees within thirty days from the date of dispatch of the request of the Railways. The General Manager shall appoint at least one out of them as the contractor's nominee and panel or from outside the panel, duly indicating the "presiding officer" from amongst the three arbitrators. The exercise of appointing the Arbitral Tribunal shall be completed within thirty days from the receipt of names of contractor's nominees. Thus, the right of the General Manager in formation of the Arbitral Tribunal is counterbalanced by the respondent's power to choose any two from out of the four names and the General Manager shall appoint at least one out of them as the contractor's nominee."

14. It must at this stage itself be noted that admittedly it is the unamended Clause 64(3)(a)(ii) which applies to the present case and not Clause 64(3)(b). As would be manifest from a reading of the aforesaid clause while it mandates the constitution of a Tribunal to comprise of three gazetted railway officers or in the alternative of two serving and one retired railway officer, the ultimate constitution of the Tribunal itself is left principally in the hands of the General Manager. The appointment of serving railway officers would undisputedly fall foul of the disqualifications which now stand prescribed and embodied under the Act. The procedure as prescribed under Clause 64(3)(a)(ii) contemplates a limited and restrictive appointment procedure by empowering the General Manager alone to select, appoint and nominate the arbitrators. Such a procedure would clearly be contrary to the principles of impartiality and independence which must permeate the constitution process itself and which aspect were highlighted by the Supreme Court in Perkins Eastman Architects DPC v. HSCC (India) Ltd.<sup>4</sup> as well as in Voestalpine Schienen GmbH v. DMRC<sup>5</sup>.

15. The Court notes that in a recent decision rendered by it in BSC Projects Private Limited v. Ircon International Limited,<sup>6</sup> the Court while examining an identical appointment provision, had held as follows:-

(2020) 20 SCC 760 (2017) 4 SCC 665 By:NEHA Signing Date:29.03.2023 20:01:05  
"7. That takes the Court then to the question of the proceedings liable to be initiated for the purposes of constitution of the Arbitral Tribunal itself. As per Clause 73.4(a)(ii), the employer is to forward a panel of more than three names to the contractor within sixty days from the day when a written and valid demand for arbitration is received. From the panel which is so provided, the contractor is required to suggest to the Chairman and Managing Director at least two names. The Chairman and Managing Director, thereafter, is empowered to appoint a nominee arbitrator from at least one out of the names as suggested. That Arbitrator would be recognised as the contractor's nominee.

8. Quite apart from the fact that the respondent has abjectly failed to act in terms of the aforesaid clause since no panel had been provided for the consideration of the petitioner, the Court observes that Clause 73.4(a)(ii) clearly does not appear to leave any element of choice in the hands of the contractor. It is ultimately for the Chairman

and Managing Director to make that nomination. It is in the aforesaid context that the validity of the arbitration and appointment process itself is assailed by Mr. Narula.

9. According to Mr. Narula, while construing the very same clause, the Court in M/S CMM Infraprojects LTD. vs. Ircon International LTD., [2021 SCC OnLine Del 5656] has made the following pertinent observations: -

"40. In CORE (supra), Clause 64 of the GCC which dealt with the procedure of resolution of disputes and provided for demand for arbitration, underwent a change, subsequent to the coming into force of the Arbitration and Conciliation (Amendment) Act, 2015. The Ministry of Railways made a modification to Clause 64 of the GCC, and the Railway Board issued a notification to that effect. The modified clauses which were applicable to the facts of the said case on account of the value of the work contract being more than Rs. 1 Crore, were Clauses 64(b)(a)(ii) and 64(3)(b) of the GCC. As noted above, the former pertained to situations wherein the applicability of Section 12(5) was waived off and the latter pertained to situations where there was no waiver.

41. On considering the afore-noted clauses, the Supreme Court observed that since after coming into force of the Amendment Act of 2015, Clause 64 of GCC had been modified, the High Court was not justified in appointing an independent Sole Arbitrator. Accordingly, the parties were relegated to the procedure of appointment under Clause 64(3)(b) of the GCC, which was found to be a valid clause. The crux of the Supreme Court's reasoning is that ".....Since the respondent has been given the power to select two names from out of the four names of the panel, the power of the appellant nominating its arbitrator gets counter-balanced by the power of choice given to the respondent. Thus, the power of the General Manager to nominate the By:NEHA Signing Date:29.03.2023 20:01:05 arbitrator is counter-balanced by the power of the respondent to select any of the two nominees from out of the four names suggested from the panel of the retired officers. In view of the modified Clauses 64(3)(a)(ii) and 64(3)(b) of GCC, it cannot therefore be said that the General Manager has become ineligible to act as the arbitrator."

42. In contrast, in the instant case the relevant arbitration clause has not been modified. Thus, if we were to do a conjoint reading of Clauses 73.4(a)(ii) and 73.4(a)(vi), it is manifest that the arbitration clause contemplates appointment of serving officials of the Respondent as arbitrators. The clause therefore as worded currently, runs foul with Section 12(5) and Schedule VII of the Act. Thus, CORE (supra) is distinguishable on facts and is not applicable.

43. The other anomaly which merits consideration is that the Managing Director of the Respondent, who has a direct interest in the outcome of the case, is directly appointing 2/3rd of the members of the Arbitral Tribunal and also plays a role in the appointment of the 3rd arbitrator i.e., the contractor's nominee. This is against the spirit of the judgment in Perkins Eastman (supra). This

argument was perhaps not raised in CORE (supra)."

10. The Court finds from a reading of the decision in CMM Infraprojects that the learned Judge has for reasons recorded ultimately found that Clause 73.4(a)(ii) stands on a completely distinct and different footing from the clause which had fallen for consideration before the Supreme Court in Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV), [(2020) 14 SCC 712]. Central Organisation for Railway Electrification had upheld the appointment process since the contractor in terms of the arbitration agreement did have the requisite right to make a choice out of a broad-based panel. While it may be only observed that Perkins was cited for the consideration of the Bench which had decided Central Organisation for Railway Electrification [and which appears to have escaped the attention of the Court while rendering judgment on CMM Infraproject], the Supreme Court had on an ultimate analysis found that the arbitration clause was not only distinct from the one which had been disapproved, it had on an ultimate analysis found that the choice conferred on parties was sufficient to uphold the appointment process. That clearly does not appear to be the position which obtains here when one bears in mind that it is the Chairman and Managing Director who was to ultimately make the appointment for and on behalf of both sides. Additionally, the clause also contemplated serving Railway officers being appointed as Arbitrators.

11. Accordingly, and for all the aforesaid reasons, the instant petition is allowed."

16. In light of the aforesaid discussion, the Court finds itself unable to sustain the appointment procedure as contemplated under Clause 64(3)(a)(ii). The Court also takes note of the submission of Mr. Varma learned senior counsel who had submitted that while the petitioner has already nominated its arbitrator, since the respondent has failed to make a nomination and has in any case forfeited its right to do so consequent to the present petition being filed, its nominee arbitrator may be appointed by this Court itself in exercise of powers conferred under by Section 11 of the Act.

17. Accordingly, and for all the aforesaid reasons, the present petition is allowed. The Court hereby Mr. Justice Jayant Nath [Official Address: 23 Babar Lane, near Bengali Market, New Delhi] [Mobile No. 8527959494] [email: jayant238@yahoo.co.in] as the nominee arbitrator of the respondent. The two nominated arbitrators shall now proceed to designate a Presiding Arbitrator.

18. The parties are directed to appear before the nominated arbitrator, as and when notified. This is subject to the nominated arbitrator making the necessary disclosures under Section 12(1) of the Act and not being ineligible under Section 12(5) of the Act.

19. The fees of the nominated arbitrator shall be decided according to the Fourth Schedule of the Act.

YASHWANT VARMA, J.

MARCH 23, 2023 SU

# **Sbs Holding Inc vs Anant Kumar Choudhary & Ors on 7 March, 2023**

**Author: Navin Chawla**

**Bench: Navin Chawla**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ O.M.P.(I) (COMM.) 71/2023  
SBS HOLDING INC

..... Petitioner  
Through: Mr.Gautam Narayan,  
Ms.Asmita Singh, Mr.Unmukt  
Gera, Mr.Harshit Goel,  
Mr.Renjith Nair, Mr.Altamash  
Quereshi & Ms.Akriti Arya,  
Advs.

versus

ANANT KUMAR CHOWDHARY & ORS.

..... Respondents  
Through: Mr.I.P.S. Oberoi, Adv. for R-4.  
Mr.Shashank Garg, Mr.Aman  
Gupta & Mr.Atharva Koppal,  
Advs. for R-5.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA  
ORDER

% 07.03.2023 I.A. 4645/2023 (Exemption)

1. Allowed, subject to all just exceptions.

O.M.P.(I) (COMM.) 71/2023

2. Issue notice.

3. Notice is accepted by Mr.I.P.S. Oberoi, learned counsel on behalf of the Official Liquidator appointed for respondent No. 4, and Mr.Shashank Garg, learned counsel on behalf of respondent No. 5.

4. Notice be served on the remaining respondents through all modes, returnable on 9th May, 2023.

5. Let reply(ies) be filed within a period of two weeks, as prayed for. Rejoinder thereto, if any, be filed within a period of two weeks thereafter.

6. It is the case of the petitioner that the petitioner has succeeded in the arbitration proceedings held under the aegis of the Singapore International Arbitration Centre, being SIAC Arbitration No. 105 of 2019, Anant Kumar Choudhary And Ors. vs. Global Enterprise Logistics Pte Ltd and Anr., by way of an Arbitral Award dated 22.12.2022. The Arbitral Award, while rejecting the claims of the respondent nos.1 to 4 herein, has also awarded costs of those proceedings in favour of the petitioner herein, who was the respondent no.2 in the said proceedings, as under:

"861. The Respondents have succeeded in all the substantive issues. However, the Respondents have failed in a number of jurisdictional objections, namely on Issues 1, 2, 4 and 6. Furthermore, 1R's case on the change of ownership of 1R being a bona fide arms-length transaction is not accepted, and even though this ultimately had no bearing on the substantive merits of the case, this aspect of the case involved a lengthy cross- examination of Mr Shigemoto. Taking into account all these factors/circumstances, including the Tribunal's costs orders made in interlocutory applications above, the Tribunal orders in accordance with Rule 37 of the SIAC Rules:

(a) The Claimants shall bear 80% of 2R's legal and other costs claimed, being SGD 1,212,838.98, USD 246,196.96, and JPY 1,102,612.

xxxxx

863. Having considered all the evidence and submissions placed before it and for the reasons set out above, the Tribunal hereby FINALLY DECLARES and DETERMINES as follows:

(d) The Claimants are jointly and severally liable to 2R for, and shall pay to 2R the amounts of SGD 1,212,838.98, USD 246,196.96, and JPY 1,102,612 within 21 days of the date of receipt of this Award, after which simple interest on this amount shall run at the rate of 5.33% per annum until the costs Signing Date:10.03.2023 ordered are paid in full."

18:15:03

7. The learned counsel for the petitioner submits that a group company of the petitioner, namely, SBS Logistics Singapore Pte Ltd., had succeeded against the respondent no. 4 in another arbitration proceedings by way of an Award dated 25.10.2017. In the course of the enforcement of the said Award against the respondent no.4, proceedings under the Insolvency and Bankruptcy Code, 2016 were initiated and the respondent no.4 is now facing liquidation. In the course of enforcement proceedings, the Court also found that amounts had been withdrawn by the respondent nos.1 to 4 from the bank accounts and all fixed assets had been encumbered so as to negate the enforcement of the Arbitral Award. In this regard, he has also drawn my attention to the order dated 27.11.2018 passed in Enforcement Petition, being O.M.P.(EFA)(COMM.) 4/2018, SBS Logistics Singapore Pte

Ltd v. SBS Transpole Logistics Private Limited. He submits that in case interim protection is not granted to the petitioner, the petitioner shall suffer the same fate in the enforcement proceedings of the present Arbitral Award.

8. The learned counsel for the petitioner submits that in the present arbitration proceedings, the respondent nos.1 to 4 were being funded by the respondent no.5 under the terms of the Bespoke Funding Agreement dated 20.12.2018 (hereinafter referred to as the 'Bespoke Agreement'). The terms of the said agreement would show that the funding of the entire litigation, including the costs of the Lawyers, the Tribunal, the Experts, etc., were borne by the respondent no.5. The learned counsel for the petitioner further submits that in terms of Clause 3(f) read with Clause 5(d) of the Bespoke Agreement, the respondent no. 5 had the exclusive and unsevered prior rights on any damages that could have been awarded by the Arbitral Award in favour of the respondent nos. 1 to 4 and against the petitioner. The said damages, thereafter, would have been distributed amongst the respondents in the manner prescribed in Clause 3(f) of the Bespoke Agreement. He submits that, therefore, respondent no. 5 having funded the arbitration proceedings is equally liable to make good the costs that have been levied on the respondent nos.1 to 4 in the Arbitral Award. In support, he places reliance on the following:-

- i) Arkin v. Borchard Line Ltd and Others, (2005) EWCA Civ 655; and
- ii) Excalibur Ventures LLC v. Texas Keystone Inc and Ors., Neutral Citation Number: (2016) EWCA Civ 1144

9. On the other hand, the learned counsel for the respondent no. 5, who appears on an advance notice, draws reference to Section 46 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') to submit that the Foreign Award can be enforced only against the "persons as between whom it was made". Hence, it cannot be enforced against third parties.

10. He further submits that the liability of the respondent no.5 under the Bespoke Agreement is confined only to the costs that are incurred by the respondent nos.1 to 4 in the arbitration proceedings and not thereafter. Further, placing reliance on Clause 7A(iv) of the agreement, he submits that the Bespoke Agreement was to terminate in case the claim filed by the respondent nos.1 to 4 in the arbitration proceedings was not a success. The said eventuality having occurred, the Bespoke Agreement stands terminated and the respondent no.5 cannot be made liable thereunder.

11. In rejoinder, however, the learned counsel for the petitioner, placing reliance on judgment of the Supreme Court in Gemini Bay Transcription Private Limited v. Integrated Sales Service Limited and Another, (2022) 1 SCC 753, submits that the scope of Section 46 of the Act is even wider than Section 35 of the Act, and would include all persons who claim under the parties to the agreement. In the present case, as provided in the Bespoke Agreement, the respondent no. 5 had a right through respondent nos. 1 to 4 in the arbitration proceedings. They, therefore, are equally liable to make good the liability that has been imposed under the Arbitral Award.

12. I have considered the submissions made by the learned counsels for the parties.

13. It cannot be denied that the Arbitral Award, in terms of the paragraphs that have been quoted hereinabove, have awarded costs of the arbitration proceedings in favour of the petitioner and against the respondent nos. 1 to 4. The petitioner, by making reference to the earlier enforcement proceedings, has also established a *prima facie* case in its favour to show that in case an ad interim injunction is not granted in its favour, the Award may be rendered as a 'paper decree'.

14. The petitioner by relying upon the Bespoke Agreement has also, at least *prima facie*, been able to show that the respondent no.5 had a vested interest in the outcome of the arbitral proceedings, having funded the respondent nos.1 to 4 for a benefit of a return therefrom in form of the result of the arbitration proceedings.

15. In Arkin (Supra), in similar circumstances, it has been held as under:-

"38. While we do not dispute the importance of helping to ensure access to justice, we consider that the judge was wrong not to give appropriate weight to the rule that costs should normally follow the event. R (on the application of Factortame) Ltd v Secretary of State for Transport, Environment and the Regions (No 2) [2002] 4 All ER 97, [2003] QB 381, on which he strongly relied, was not a case in which there was any need to take this balancing factor into account. In our judgment the existence of this rule, and the reasons given to justify its existence, render it unjust Digitally Signed By:SUNIL action for a commercial motive should be 18:15:03 protected from all liability for the costs of the opposing party if the funded party fails in the action. Somehow or other a just solution must be devised whereby on the one hand a successful opponent is not denied all his costs while on the other hand commercial funders who provide help to those seeking access to justice which they could not otherwise afford are not deterred by the fear of disproportionate costs consequences if the litigation they are supporting does not succeed.

39. If a professional funder, who is contemplating funding a discrete part of an impecunious claimant's expenses, such as the cost of expert evidence, is to be potentially liable for the entirety of the defendant's costs should the claim fail, no professional funder will be likely to be prepared to provide the necessary funding. The exposure will be too great to render funding on a contingency basis of recovery a viable commercial transaction. Access to justice will be denied. We consider, however, that there is a solution that is practicable, just and that caters for some of the policy considerations that we have considered above.

40. The approach that we are about to commend will not be appropriate in the case of a funding agreement that falls foul of the policy considerations that render an agreement champertous. A funder who enters into such an agreement will be likely to render himself liable for the opposing party's costs without limit should the claim fail. The present case has not been shown to fall into that category. Our approach is designed to cater for the commercial funder who is financing part of the costs of the litigation in a manner which facilitates access to justice and which is not otherwise

objectionable. Such funding will leave the claimant as the party primarily interested in the result of the litigation and the party in control of the conduct of the litigation.

41. We consider that a professional funder, who finances part of a claimant's costs of litigation, should be potentially liable for the costs of the opposing party to the extent of the Digitally Signed By:SUNIL course, be that, if the funding is provided on a contingency basis of recovery, the funder will require, as the price of the funding, a greater share of the recovery should the claim succeed. In the individual case, the net recovery of a successful claimant will be diminished. While this is unfortunate, it seems to us that it is a cost that the impecunious claimant can reasonably be expected to bear. Overall justice will be better served than leaving defendants in a position where they have no right to recover any costs from a professional funder whose intervention has permitted the continuation of a claim which has ultimately proved to be without merit.

42. If the course which we have proposed becomes generally accepted, it is likely to have the following consequences. Professional funders are likely to cap the funds that they provide in order to limit their exposure to a reasonable amount. This should have a salutary effect in keeping costs proportionate. In the present case there was no such cap, and it is at least possible that the costs that MPC had agreed to fund grew to an extent where they ceased to be proportionate. Professional funders will also have to consider with even greater care whether the prospects of the litigation are sufficiently good to justify the support that they are asked to give. This also will be in the public interest.

43. In the present appeal we are concerned only with a professional funder who has contributed a part of a litigant's expenses through a non-champertous agreement in the expectation of reward if the litigant succeeds. We can see no reason in principle, however, why the solution we suggest should not also be applicable where the funder has similarly contributed the greater part, or all, of the expenses of the action. We have not, however, had to explore the ramifications of an extension of the solution we propose beyond the facts of the present case, where the funder merely covered the costs incurred by the claimant in instructing expert witnesses.

44. While we have confined our comments to professional funders, it does not follow that Digitally Signed By:SUNIL who, for motives other than profit, have contributed to the costs of unsuccessful litigation, should contribute to the successful party's costs on a similar basis."

16. In Excalibur Ventures LLC (Supra), it was reiterated that:-

"23. The argument for the funder boiled down in essence to the proposition that it is not appropriate to direct them to pay costs on the indemnity basis if they have themselves been guilty of no discreditable conduct or conduct which can be criticised.

Even on the assumption that the funders were guilty of no conduct which can properly be criticised, and I accept that they did nothing discreditable in the sense of being morally reprehensible or even improper, this argument suffers from two fatal defects, both of which were identified by the judge. First, it overlooks that the conduct of the parties is but one factor to be taken into account in the overall evaluation. Second, it looks at the question from only one point of view, that of the funder. As the judge pointed out at paragraph 125, it ignores the character of the action which the funder has funded and its effect on the Defendants.

24. The argument is yet further flawed in that it assumes that the funder is responsible only for his own conduct. This too is incorrect. As the judge pointed out at paragraph 60, where conduct comes into consideration in this context, the successful party is afforded a more generous basis for assessing which of his costs should be paid by his opponent because of the way in which the latter, or those in his camp, have acted. Thus as the judge pointed out at paragraph 118, a litigant may find himself liable to pay indemnity costs on account of the conduct of those whom he has chosen to engage - e.g. lawyers, or experts, which experts may themselves have been chosen by the lawyers, or the conduct of those whom he has chosen to enlist, e.g. witnesses, even though he is not personally responsible for it. The position of the funder is directly analogous. The funder is seeking to derive financial benefit from pursuit of the claim just as much as is the funded claimant litigant, and there can be no principled reason to draw a distinction between them in this regard. I also agree with Mr Waller that the analysis here is Signing Date:10.03.2023 not dependent upon rules of agency - expert 18:15:03 and factual witnesses are not agents of the party on whose behalf they give evidence any more than they are agents of the funder. The principle is a broader principle of justice. Deployment of lawyers, experts and other witnesses is a necessary part of bringing the claim to a successful conclusion for the benefit of the litigant, and it is equally a necessary part of bringing it to a successful conclusion for the benefit of the funder. The funder chooses which claims to back, whereas, as the judge rightly observed at paragraph 125, a defendant does not choose by whom to be sued, or in what manner. The judge continued:

"If, then, the funder's witnesses turn out to be liars or the litigation is conducted unreasonably, so that the court awards costs on an indemnity scale, it is just and equitable that the funder should pay on that scale."

I agree. I can see no principled basis upon which the funder can dissociate himself from the conduct of those whom he has enabled to conduct the litigation and upon whom he relies to make a return on his investment."

17. Prima facie, I am in agreement with the above observations. A party having funded the litigation for a gain in the result thereof, cannot escape its liability in case the result is contrary to its expectation. A balance would have to be struck between a need to ensure the access to justice through this funding arrangement and the cost that the defendant would bear in case such litigation

fails and is found to be completely meritless, as in the present case. The defendant cannot be left high and dry and be made to bear its own cost for the purposes of defending a litigation, which was found without any merit and which may not have been initiated against such party but for the funding by the third party. In fact, *prima facie*, the costs which have been levied by the Arbitral Award would become the cost which will be Verified Signature Not covered by the Bespoke Agreement itself, as these are costs of Digitally Signed By:SUNIL Signing Date:10.03.2023 18:15:03 litigation of respondent nos.1 to 4 herein.

18. The fact that the Bespoke Agreement states that it shall stand terminated in case the claim is not successful, can also, *prima facie*, not affect the right of the petitioner inasmuch as the said agreement would continue till the passing of the Arbitral Award and the costs are part of the Arbitral Award. Thereafter, the petitioner is only seeking to enforce the Arbitral Award in terms of the Bespoke Agreement.

19. The submission of the learned counsel for the respondent no.5 that in terms of Section 46 of the Act, the enforcement of a Foreign Award can only be against the party to the Agreement, also *prima facie*, does not impress me. The Supreme Court Gemini Bay Transcription Private Limited (Supra), has observed as under:-

"73. Shri Salve argued relying upon three judgments of this Court, namely, Indowind Energy Ltd. v. WesCare (India) Ltd., (2010) 5 SCC 306, Chloro Controls (India) (P) Ltd. v. Severn Trent Water Purification Inc., (2013) 1 SCC 641, Cheran Properties Ltd. v. Kasturi & Sons Ltd., (2018) 16 SCC 413 that a comparison between Sections 35 and 46 of the Arbitration Act, 1996 would show that the legislature circumscribed the power of the enforcing court under Section 46 to persons who are bound by a foreign award as opposed to persons which would include "persons claiming under them" and that, therefore, a foreign award would be binding on parties alone and not on others.

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. Also, Section 35 of the Act speaks of "persons" in the context of an arbitral award being final and binding on the "parties" and "persons claiming under them", respectively. Section 35 would, therefore, refer to only persons claiming under parties and is, therefore, more restrictive in its application than Section 46 which speaks of "persons"

without any restriction...."

20. In view of the above, the petitioner has been able to make out a good *prima facie* case in its favour. The balance of convenience is also in favour of the petitioner and against the respondents. The petitioner is likely to suffer grave irreparable injury in case an ad interim injunction is not granted in favour of the petitioner and against the respondents.

21. Accordingly, the respondent nos.1, 2, 3 and 5 are directed to disclose on affidavit their fixed assets and bank accounts, along with the credit balance in the same held by them in India or any other jurisdiction as on date. Such affidavit be filed within a period of four weeks. The respondent nos.1, 2, 3 and 5 are further restrained from creating any third-party interest/right/title in respect of any unencumbered immoveable assets for a sum as has been awarded in favour of the petitioner by way of the Arbitral Award dated 22.12.2022, till further orders.

22. List on 9th May, 2023.

NAVIN CHAWLA, J MARCH 7, 2023/rv/Rk

# Shri Arun Kumar Jain & Anr vs 1. Shri Manish Jaina & Ors on 14 February, 2023

**Author: Yashwant Varma**

**Bench: Yashwant Varma**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ CS(0S) 394/2022  
SHRI ARUN KUMAR JAIN & ANR. .... Plaintiffs  
Through: Appearance not given  
versus  
1. SHRI MANISH JAINA & ORS. .... Defendants  
Through: Mr. Pulkit Aggarwal and Ms.  
Uma Aggarwal, Advs.  
CORAM:  
HON'BLE MR. JUSTICE YASHWANT VARMA  
ORDER

% 14.02.2023 I.A. 2930/2023(Exemption From Valuation & Stamp Duty)

1. This application has been moved for the plaintiff being exempted from the requirements of registration of a decree which came to be rendered on the basis of a settlement arrived at between the parties.
2. The settlement is dated 24 November 2022. In terms of the said settlement, the suit itself came to be decreed by the Court on 04 January 2023. The Registry, however, appears to have taken the position that the decree which related to partition would be liable to be registered in terms of Section 17(1)(b) of the Registration Act, 1908.
3. Learned counsel for the plaintiff has drawn the attention of the Court to the judgment rendered in Mohammade Yusuf and Ors. vs. Rajkumar and Ors., [(2020) 10 SCC 264] as well as Ripudaman Singh vs. Tikka Maheshwar Chand, [(2021) 7 SCC 446] to contend that since the decree of partition came to be rendered on compromise and settlement between the parties, and relates to property which formed subject matter of the suit, it would clearly be exempt in terms of the provision made in Section 17(2)(vi).
4. While dealing with an identical question, the Supreme Court in Mohammade Yusuf had held has follows:-

"6. Under Section 17(1)(b), non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property requires registration. The word

"instrument" is not defined in the Registration Act, but is defined in the Stamp Act, 1899 by Section 2(14).

7. A compromise decree passed by a court would ordinarily be covered by Section 17(1)(b) but sub-section (2) of Section 17 provides for an exception for any decree or order of a court except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding. Thus, by virtue of sub- section (2)(vi) of Section 17 any decree or order of a court does not require registration. In sub-clause (vi) of sub-section (2), one category is excepted from sub-clause (vi) i.e. a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding. Thus, by conjointly reading Section 17(1)(b) and Section 17(2)(vi), it is clear that a compromise decree comprising immovable property other than which is the subject-matter of the suit or proceeding requires registration, although any decree or order of a court is exempted from registration by virtue of Section 17(2)(vi). A copy of the decree passed in Suit No. 250-A of 1984 has been brought on record as Annexure P-2, which indicates that decree dated 4-10-1985 was passed by the Court for the property, which was subject-matter of the suit. Thus, the exclusionary clause in Section 17(2)(vi) is not applicable and the compromise decree dated 4-10-1985 was not required to be registered on plain reading of Section 17(2)(vi). The High Court referred to the judgment of this Court in Bhoop Singh v. Ram Singh [Bhoop Singh v. Ram Singh, (1995) 5 SCC 709], in which case, the provision of Section 17(2)(vi) of the Registration Act came for consideration. This Court in the above case while considering clause (vi) laid down the following in paras 16, 17 and 18: (SCC pp. 715-16) "16. We have to view the reach of clause (vi), which is an exception to sub-section (1), bearing all the aforesaid in mind. We would think that the exception engrafted is meant to cover that decree or order of a court, including a decree or order expressed to be made on a compromise, which declares the pre-existing right and does not by itself create new right, title or interest in praesenti in immovable property of the value of Rs 100 or upwards. Any other view would find the mischief of avoidance of registration, which requires payment of stamp duty, embedded in the decree or order.

17. It would, therefore, be the duty of the court to examine in each case whether the parties have pre-existing right to the immovable property, or whether under the order or decree of the court one party having right, title or interest therein agreed interest in praesenti in immovable property of the value of Rs 100 or upwards in favour of other party for the first time, either by compromise or pretended consent. If latter be the position, the document is compulsorily registrable.

18. The legal position qua clause (vi) can, on the basis of the aforesaid discussion, be summarised as below:

(1) Compromise decree if bona fide, in the sense that the compromise is not a device to obviate payment of stamp duty and frustrate the law relating to registration, would not require registration. In a converse situation, it would require registration.

(2) If the compromise decree were to create for the first time right, title or interest in immovable property of the value of Rs 100 or upwards in favour of any party to the suit the decree or order would require registration.

(3) If the decree were not to attract any of the clauses of sub-section (1) of Section 17, as was the position in the aforesaid Privy Council [Ed.: The reference is to Hemanta Kumari Debi v. Midnapur Zamindari Co. Ltd., 1919 SCC OnLine PC 41 : (1918-19) 46 IA 240] and this Court's cases [Ed.: The reference is to Mangan Lal Deoshi v. Mohd.

Moinul Haque, 1950 SCC 760: AIR 1951 SC 11; Bishundeo Narain v. Seogeni Rai, 1951 SCC 447 : AIR 1951 SC 280 and Shankar Sitaram Sontakke. Balkrishna Sitaram Sontakke, AIR 1954 SC 352] , it is apparent that the decree would not require registration.

(4) If the decree were not to embody the terms of compromise, as was the position in Lahore case [Fazal Rasul Khan v. Mohd-ul-Nisa, 1943 SCC OnLine Lah 128 :

AIR 1944 Lah 394] , benefit from the terms of compromise cannot be derived, even if a suit were to be disposed of because of the compromise in question.

(5) If the property dealt with by the decree be not the "subject-matter of the suit or proceeding", clause (vi) of sub-section (2) would not operate, because of the amendment of this clause by Act 21 of 1929, which has its origin in the aforesaid decision of the Privy Council, according to which the original clause would have been attracted, even if it were to encompass property not litigated."

5. Consequently, the instant application shall stand allowed. The parties are relieved from the obligation of seeking further registration of the compromise decree for reasons aforesigned.

YASHWANT VARMA, J.

FEBRUARY 14, 2023/neha

# **Star India Private Limited. & Anr vs Live4Wap.Click & Ors on 11 January, 2023**

**Author: C. Hari Shankar**

**Bench: C.Hari Shankar**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ CS(COMM) 11/2023 & I.A. 496/2023, I.A. 497/2023, I.A. 498/2023, I.A. 499/2023

STAR INDIA PRIVATE LIMITED. & ANR. .... Plaintiffs  
Through: Mr. Sandeep Sethi, Sr. Adv.  
with Mr. Siddharth Chopra, Mr. Yatinder  
Garg, Mr. Raunak Das Sharma and Ms.  
Rimjhim Tiwari, Advs.

versus

LIVE4WAP.CLICK & ORS. .... Defendants  
Through: Mr Ajay Gupta, Adv. for  
Defendant 29

CORAM:  
HON'BLE MR. JUSTICE C.HARI SHANKAR  
ORDER

% 11.01.2023 I.A. 499/2023 in CS(COMM) 11/2023

1. This is an application, under Order XI Rule 1(4) of the Code of Civil Procedure, 1908 (CPC) as amended by the Commercial Courts Act, 2015, seeking permission to file additional documents.
2. For the reasons stated in the application, the plaintiffs are permitted to file additional documents within four weeks from today in accordance with the protocol envisaged by Order XI Rule 1(4) of the CPC.
3. The application is allowed accordingly.

I.A. 498/2023 in CS(COMM) 11/2023

4. Subject to the plaintiffs' filing legible copies of any dim or illegible documents on which they may seek to place reliance within four weeks from today, exemption is granted for the present.
5. The application is allowed accordingly.

I.A. 497/2023 in CS(COMM) 11/2023

6. Given the urgent nature of the relief sought in the plaint, exemption is granted for the present from serving notice under Section 80 of the CPC on the official defendants.

7. The application is allowed accordingly.

CS(COMM) 11/2023

8. Plaintiff 1 provides broadcasting services. Plaintiff 2 owns the online streaming platform/website [www.hotstar.com](http://www.hotstar.com) and "Disney + Hotstar" and the corresponding Mobile App, which enables viewers to watch serials, sports, movies and the like.

9. The plaint asserts that, vide agreement dated 5th April 2018 executed between the Board of Control for Cricket in India (BCCI) and the plaintiffs, exclusive global media rights, for streaming/transmitting, over the television and digital media, events conducted by the BCCI, including the cricket tournaments which are to take place between Sri Lanka and India, New Zealand and India and Australia and India during the period from 15th March 2018 to 31st March 2023, have been granted to the plaintiffs.

10. By virtue of this agreement, the plaintiffs assert exclusive rights to make available to the public the events relating to cricket tournaments conducted by the BCCI during the aforesaid period 15th March 2018 to 31st March 2023, on any platform including the internet and mobile. Any such transmission or broadcasting of the said event by any other entity, it is submitted, would be infringing the exclusive copyright held by the plaintiffs in that regard, emanating from the agreement dated 5th April 2018.

11. Defendants 1 to 11 are stated to be rogue websites, engaged in making available to public third-party content and information through internet and mobile transmission.

12. The websites are stated to be streaming and providing access, as well as transmitting and broadcasting matches being conducted between India and Sri Lanka during the ongoing tour which commenced on 3rd January 2023 without any authorisation from the plaintiffs. For this purpose, it is stated that Defendant 6 is illegally using the name of website Cricbuzz.com, to which, too, the said defendant has no right.

13. In these circumstances, the plaint asserts that the plaintiffs issued cease and desist notices to Defendants 1 to 11 on 3rd and 4th January 2023 calling on them to desist from transmitting or broadcasting the aforesaid content. The plaintiffs also sent a notice dated 6th January 2023 to the internet service providers (ISPs, Defendants 18 to 26, calling on them to block access to the websites of Defendants 1 to 11.

14. It is in these circumstances that the plaintiffs have approached this Court by means of the present suit, seeking protection against infringement of copyright.

injunction against Defendants 1 to 11 from making available to the public, essentially by transmitting or broadcasting, in any manner, whether over the television or over any digital platform or the internet, the content relating to the events conducted by BCCI as broadcasted by the plaintiffs in their channels including "Hotstar" and "Disney + Hotstar". Other directions, to the remaining defendants, towards implementation of the said injunction is also sought.

16. Prima facie, there is substance in the grievance of the plaintiffs. It is a matter of common knowledge that such rogue websites come into being before such events takes places and, without any licence or authorisation, start streaming and broadcasting the events over which copyright is held by others.

17. This Court finds itself inundated with such suits, which keep cropping up every now and then. It may be useful for the Legislature to formulate some kind of a policy by which such disputes can avoid being taking up the time of the courts. That said, as the plaintiffs have a clear prima facie case, they would be entitled to an injunction as sought.

18. In the circumstances, let the plaint be registered as a suit.

19. Issue summons in the suit.

20. Summons are accepted, on behalf of Defendant no. 29, by Mr Ajay Gupta.

21. Let summons issue to remaining defendants by all modes.

22. Written statement, if any, accompanied by affidavit of admission and denial of the documents filed by the plaintiffs be filed within 30 days with advance copy to learned Counsel for the plaintiffs who may file replication thereto, accompanied by affidavit of admission denial of documents filed by the defendants within 30 days thereof.

23. List before the Joint Registrar on 21st February 2023 for completion of pleadings, admission and denial of documents and marking of exhibits, whereafter the matter would be placed before the Court for case management and further hearing.

24. This application seeks ad interim protection.

25. My attention has been invited to earlier orders passed by this Court in which similar directions had been issued in similar circumstances.

26. Accordingly, the following interlocutory directions are passed, to remain in force till the next date of hearing:

(i) Defendants No. 1 to 11 (and such other mirror/redirect/phanumeric websites of Defendants 1 to 11 which are discovered during the course of the proceedings and notified on Affidavit by the Plaintiffs to have been infringing the Plaintiffs' exclusive rights and copyrights), their owners,

partners, proprietors, officers, servants, employees, and all others in capacity of principal or agent acting for and on their restrained from communicating, hosting, streaming, and/or making available for viewing and downloading, without authorization, on their websites or other platforms, through the internet in any manner whatsoever, the content over which the plaintiff has exclusive copyright, so as to infringe the Plaintiffs' exclusive rights, copyrights and broadcast reproduction rights.

(ii) Defendant 12 is directed to suspend the domain name registration of Defendants 1,3 8 and 10 in respect of the websites (live4wap.click, khantv.khantv.com, s1.mylivecricket.club and hesgoaltv.me).

(iii) Defendant 13 is directed to suspend the domain name registration of Defendants 2 and 6 & 29 in respect of the websites (a-sports-live.com and cricbuzzlive.in).

(iv) Defendant 14 is directed to suspend the domain name registration of Defendants 4 and 5 in respect of the websites (beemsports.com and btsportlivestream.com).

(v) Defendant 15 is directed to suspend the domain name registration of Defendant 11 in respect of the website (wikicast.tv).

(vi) Defendant 16 is directed to suspend the domain name registration of Defendant 9 in respect of the website (neymartv.net).

(vii) Defendant 17 is directed to suspend the domain name registration of Defendant 7 (123cric.com) in respect of the website (neymartv.net).

(viii) Defendant 29 is directed to suspend/cancel the domain name registration of the domains cricbuzzlive.in.

(ix) Defendants 12 to 17 and 29 are directed to disclose, on affidavit, (a) complete details such as name, address, email address, phone number, IP address, etc. (b.) Mode of payment along with payment details used for registration of domain name by the registrant(s) and (c.) details of other websites registered by the Defendant Nos. 1 to 11 using similar details, same credit card, payment gateway etc. (disclosed as per sub- clause (b) above) with the Defendant Nos. 12 to 17 & 29.

(x) To facilitate implementation of the aforesaid directions, Defendants 27 and 28 are directed to issue a notification, calling on internet and telecom service providers registered under the said defendants, to block access to the aforesaid websites identified by the plaintiff and enumerated in the serial no.1 in the documents annexed to the plaint.

27. Mr. Sandeep Sethi, learned Senior Counsel for the plaintiffs, also seeks, in order that the plaintiffs are not constrained to approach this Court time and again against new infringing websites which may mushroom during the course of these proceedings, that an order of dynamic injunction be granted, whereby access to the said websites would be blocked on the plaintiffs' filing an affidavit with Defendants 18 to 26 and 29, immediately on filing of the said affidavit. He undertakes, in order to maintain transparency in the process, that the plaintiffs would also, side-by-side, file the affidavit

before this Court.

28. He draws my attention, in this context, to para 93 of the judgment Communication Ltd v. 1337X.To and Ors.1.

29. Accordingly, Defendants 18 to 26 and 29 are directed to block access to any alphanumeric/redirect/mirror website of the defendant- websites which is communicated, to them, by the plaintiffs, on affidavit, to be indulging in infringing activities similar to those in which Defendants 1 to 11 in the present plaint are indulging.

30. The plaintiffs would also, immediately, file a copy of the said affidavit before this Court.

31. The aforesaid directions shall remain in force till the next date of hearing.

32. The plaintiffs are directed to comply with the provisions of Order XXXIX Rule 3 of the CPC qua the defendants who are un- represented today within a period of one week from today by all modes possible.

33. List this application before the Court on 15th March 2023.

C. HARI SHANKAR, J.

JANUARY 11, 2023 dsn (2019) 78 PTC 375 Digitally Signed By:SUNIL SINGH NEGI Signing Date:16.01.2023 10:36:48

# **Unity Aurum Construction Private ... vs Lok Sabha Employees Cooperative ... on 12 April, 2023**

**Author: Yashwant Varma**

**Bench: Yashwant Varma**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ARB.P. 244/2023

UNITY AURUM CONSTRUCTION PRIVATE LIMITED

..... Petitioner

Through: Mr. Utsav Saxena, Mr. Somesh  
Tiwari, Mr. Amit Dubey, Mr.  
Kavish Nair and Pranav Gupta,  
Advocates

versus

LOK SABHA EMPLOYEES COOPERATIVE HOUSING

SOCIETY LIMITED ..... Respondent

Through: Mr. Sanjeev Kumar Dubey, Sr.  
Adv. with Mr. Venus Anand,  
Mr. Asif Inam and Ms.  
Niharika Dubey, Advocates

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA  
ORDER

% 12.04.2023

1. The present petition under Section 11 of the Arbitration and Conciliation Act, 1996 [the Act] has been instituted consequent to disputes having arisen inter partes.
2. According to the petitioners since the respondent has failed to respond to the notice invoking arbitration and has also failed to resolve disputes which exist, the Court should constitute the Arbitral Tribunal.
3. Mr. Dubey, learned senior counsel who has appeared on behalf of the respondent however takes a preliminary objection to the maintainability of the petition and draws the attention of the Court to the venue restriction clause as contained in the agreement and which reads as follows:

22. Governing Law and Jurisdiction This Agreement shall be governed by and interpreted in accordance with laws in India and state laws of State of Uttar Pradesh. All disputes arising out of or in any way connected with this agreement/contract shall

be deemed to have arisen in Ghaziabad and only the Courts at Ghaziabad, UP shall have jurisdiction to determine the same.

4. Undisputedly, it is the aforesaid agreement which also contains the arbitration clause. According to Mr. Dubey the exclusive jurisdiction which stood conferred on Ghaziabad would necessarily result in Ghaziabad being construed as the seat of the arbitration and in the absence of any contra indication thereto.

5. Learned counsel for the petitioner on the other hand would submit that in connection with the working of the contract, tax invoices came to be issued from time to time which were duly honoured by the respondent and payments also effected. According to learned counsel those tax invoices clearly specify New Delhi to be the seat of arbitration.

6. It becomes pertinent to note that the tax invoices were undisputedly raised post the execution of the principal agreement, parts whereof have been extracted hereinabove. According to learned counsel since the original agreement did not specify a seat, it is the stipulations contained in the tax invoice which would apply.

7. The Court finds itself unable to sustain the aforesaid submission bearing in mind the following pertinent observations as were entered in BGS SGS SOMA JV v. NHPC [(2020) 4 SCC 234]:-

32. It can thus be seen that given the new concept of Juridical seat of the arbitral proceedings, and the importance given by the Arbitration Act, 1996 to this seat, the arbitral award is now not only to state its date, but also the place of arbitration as determined in accordance with Section 20. However, the definition of court contained in Section 2(1)(c) of the Arbitration Act, 1940, continued as such in the Arbitration Act, 1996, though narrowed to mean only principal civil court and the High Court in exercise of their original ordinary civil jurisdiction. Thus, the concept of juridical seat of the arbitral proceedings and its relationship to the jurisdiction of courts which are then to look into matters relating to the arbitral proceedings -- including challenges to arbitral awards -- was unclear, and had to be developed in accordance with international practice on a case by case basis by this Court.

33. Some of the early decisions of this Court did not properly distinguish between seat and venue of an arbitral proceeding.

The five-Judge Bench in Balco [Balco v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] dealt with this problem as follows: (SCC pp. 597-99, 605- 607, paras 75-76, 95-96, 98-99) 75. We are also unable to accept the submission of the learned counsel for the appellants that the Arbitration Act, 1996 does not make seat of the arbitration as the centre of gravity of the arbitration. On the contrary, it is accepted by most of the experts that in most of the national laws, arbitrations are anchored to the seat/place/situs of arbitration. Redfern in Para 3.54 concludes that 'the seat of the arbitration is thus intended to be its centre of gravity.' [Blackaby, Partasides, Redfern and Hunter (Eds.), Redfern and Hunter on International Arbitration (5th Edn.,

Oxford University Press, Oxford/New York 2009)] This, however, does not mean that all the proceedings of the arbitration have to take place at the seat of the arbitration. The arbitrators at times hold meetings at more convenient locations. This is necessary as arbitrators often come from different countries. It may, therefore, on occasions be convenient to hold some of the meetings in a location which may be convenient to all. Such a situation was examined by the Court of Appeal in England in *Naviera Amazonica Peruana SA v. Compania International de Seguros del Peru* [*NavieraAmazonica Peruana SA v. Compania International de Seguros del Peru*, (1988) 1 Lloyd's Rep 116 (CA)] wherein at p. 121 it is observed as follows:

□The preceding discussion has been on the basis that there is only one □place of arbitration. This will be the place chosen by or on behalf of the parties; and it will be designated in the arbitration agreement or the terms of reference or the minutes of proceedings or in some other way as the place or □seat of the arbitration. This does not mean, however, that the Arbitral Tribunal must hold all its meetings or hearings at the place of arbitration. International commercial arbitration often involves people of many different nationalities, from many different countries. In these circumstances, it is by no means unusual for an Arbitral Tribunal to hold meetings--or even hearings --in a place other than the designated place of arbitration, either for its own convenience or for the convenience of the parties or their witnesses.... It may be more convenient for an Arbitral Tribunal sitting in one country to conduct a hearing in another country -- for instance, for the purpose of taking evidence.... In such circumstances each move of the Arbitral Tribunal does not of itself mean that the seat of arbitration changes. The seat of arbitration remains the place initially agreed by or on behalf of the parties.' These observations were subsequently followed in *Union of India v. McDonnell Douglas Corp.* [*Union of India v. McDonnell Douglas Corp.*, (1993) 2 Lloyd's Rep 48]

76. It must be pointed out that the law of the seat or place where the arbitration is held, is normally the law to govern that arbitration. The territorial link between the place of arbitration and the law governing that arbitration is well established in the international instruments, namely, the New York Convention of 1958 and the UNCITRAL Model Law of 1985. It is true that the terms □seat and □place are often used interchangeably. In *Redfern and Hunter on International Arbitration* [Blackaby, Partasides, Redfern and Hunter (Eds.), *Redfern and Hunter on International Arbitration* (5th Edn., Oxford University Press, Oxford/New York 2009)] (Para 3.51), the seat theory is defined thus: □The concept that an arbitration is governed by the law of the place in which it is held, which is the □seat (or □forum or locus arbitri) of the arbitration, is well established in both the theory and practice of international arbitration. In fact, the Geneva Protocol, 1923 states:

□2. The arbitral procedure, including the constitution of the Arbitral Tribunal, shall be governed by the will of the parties and by the law of the country in whose territory the arbitration takes place.' The New York Convention maintains the reference to □the law of the country where the arbitration took place' [Article V(1)(d)] and,

synonymously to 'the law of the country where the award is made' [Articles V(1)(a) and (e)]. The aforesaid observations clearly show that the New York Convention continues the clear territorial link between the place of arbitration and the law governing that arbitration. The author further points out that this territorial link is again maintained in the Model Law which provides in Article 1(2) that:

'(2) the provision of this Law, except Articles 8, 9, 35 and 36, apply only if the place of arbitration is in the territory of the State.' Just as the Arbitration Act, 1996 maintains the territorial link between the place of arbitration and its law of arbitration, the law in Switzerland and England also maintain a clear link between the seat of 176(I). (1) The provision of this chapter shall apply to any arbitration if the seat of the Arbitral Tribunal is in Switzerland and if, at the time when the arbitration agreement was concluded, at least one of the parties had neither its domicile nor its habitual residence in Switzerland.' [See the Swiss Private International Law Act, 1987, Ch. 12, Article 176 (I)(1).] \*\*\*

95. The learned counsel for the appellants have submitted that Section 2(1)(e), Section 20 and Section 28 read with Section 45 and Section 48(1)(e) make it clear that Part I is not limited only to arbitrations which take place in India. These provisions indicate that the Arbitration Act, 1996 is subject-matter centric and not exclusively seat-centric. Therefore, 'seat' is not the 'centre of gravity' so far as the Arbitration Act, 1996 is concerned. We are of the considered opinion that the aforesaid provisions have to be interpreted by keeping the principle of territoriality at the forefront. We have earlier observed that Section 2(2) does not make Part I applicable to arbitrations seated or held outside India. In view of the expression used in Section 2(2), the maxim expressum facit cessare tacitum, would not permit by interpretation to hold that Part I would also apply to arbitrations held outside the territory of India.

The expression 'this Part shall apply where the place of arbitration is in India' necessarily excludes application of Part I to arbitration seated or held outside India. It appears to us that neither of the provisions relied upon by the learned counsel for the appellants would make any section of Part I applicable to arbitration seated outside India. It will be apposite now to consider each of the aforesaid provisions in turn.

96. Section 2(1)(e) of the Arbitration Act, 1996 reads as under:

'2. Definitions.--(1) In this Part, unless the context otherwise requires.--

(e) 'Court' means the Principal civil court of Original Jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such Principal civil court, or any Court of Small Causes.' We are of

the opinion, the term **subject-matter** of the arbitration cannot be confused with **subject-matter** of the suit . The term **subject-matter** in Section 2(1)(e) is confined to Part I. It has a reference and connection with the process of dispute resolution. Its purpose is to identify the courts having supervisory control over the arbitration proceedings. Hence, it refers to a court which would essentially be a court of the seat of the arbitration process. In our opinion, the provision in provisions in Section 20 which give recognition to party autonomy. Accepting the narrow construction as projected by the learned counsel for the appellants would, in fact, render Section 20 nugatory. In our view, the legislature has intentionally given jurisdiction to two courts i.e. the court which would have jurisdiction where the cause of action is located and the courts where the arbitration takes place. This was necessary as on many occasions the agreement may provide for a seat of arbitration at a place which would be neutral to both the parties. Therefore, the courts where the arbitration takes place would be required to exercise supervisory control over the arbitral process. For example, if the arbitration is held in Delhi, where neither of the parties are from Delhi, (Delhi having been chosen as a neutral place as between a party from Mumbai and the other from Kolkata) and the tribunal sitting in Delhi passes an interim order Under Section 17 of the Arbitration Act, 1996, the appeal against such an interim order under Section 37 must lie to the courts of Delhi being the courts having supervisory jurisdiction over the arbitration proceedings and the tribunal. This would be irrespective of the fact that the obligations to be performed under the contract were to be performed either at Mumbai or at Kolkata, and only arbitration is to take place in Delhi. In such circumstances, both the courts would have jurisdiction i.e. the court within whose jurisdiction the subject-matter of the suit is situated and the courts within the jurisdiction of which the dispute resolution i.e. arbitration is located.

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98. We now come to Section 20, which is as under:

- 20. Place of arbitration.--**(1) The parties are free to agree on the place of arbitration.
- (2) Failing any agreement referred to in sub-section (1), the place of arbitration shall be determined by the Arbitral Tribunal having regard to the circumstances of the case, including the convenience of the parties.
- (3) Notwithstanding sub-section (1) or sub-section (2), the Arbitral Tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, good or other property.' A plain reading of Section 20 leaves no room for doubt that where the place of arbitration is in India, the parties are free to agree to any **place** or **seat** within India, be it Delhi, Mumbai, etc. In the absence of the parties' agreement thereto, Section 20(2) authorises the tribunal to

determine the place/seat of such arbitration. Section 20(3) enables the tribunal to meet at any place for conducting hearings at a place of convenience in matters such as consultations among its members for hearing witnesses, experts or the parties.

99. The fixation of the most convenient ~~venue~~ is taken care of by Section 20(3). Section 20, has to be read in the context of Section 2(2), which places a threshold limitation on the applicability of Part I, where the place of arbitration is in India. Therefore, Section 20 would also not support the submission of the extra-territorial applicability of Part I, as canvassed by the learned counsel for the appellants, so far as purely domestic arbitration is concerned. (emphasis in original and supplied)

34. The Court in Balco [Balco v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] then went on to refer to several English judgments and specifically italicised several parts of the judgment in Shashoua v. Sharma [Shashoua v. Sharma, 2009 EWHC 957 (Comm) : (2009) 2 Lloyd's Law Rep 376] as follows :

(Balco case [Balco v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] , SCC p. 614, para

110) ~~¶~~10. Examining the fact situation in the case, the Court observed as follows:

~~¶~~The basis for the court's grant of an anti-suit injunction of the kind sought depended upon the seat of the arbitration. An agreement as to the seat of an arbitration brought in the law of that country as the curial law and was analogous to an exclusive jurisdiction clause. Not only was there agreement to the curial law of the seat, but also to the courts of the seat having supervisory jurisdiction over the arbitration, so that, by agreeing to the seat, the parties agreed that any challenge to an interim or final award was to be made only in the courts of the place designated as the seat of the arbitration. Although, ~~venue~~ was not synonymous with ~~seat~~, in an arbitration clause which provided for arbitration to be conducted in accordance with the Rules of the ICC in Paris (a supranational body of rules), a provision that ~~the~~ venue of arbitration shall be London, United Kingdom did amount to the designation of a juridical seat....' In para 54, it is further observed as follows:

~~¶~~There was a little debate about the possibility of the issues relating to the alleged submission by the claimants to the jurisdiction of the High Court of Delhi being heard by that court, because it was best fitted to determine such issues under the Indian Law. Whilst I found this idea attractive initially, we are persuaded that it would be wrong in principle to allow this and that it would create undue practical problems in any event. On the basis of what I have already decided, England is the seat of the arbitration and since this carries with it something akin to an exclusive jurisdiction clause, as a matter of principle the foreign court should not decide matters which are for this Court to decide in the context of an anti-suit injunction.' In making the aforesaid observations in Shashoua case [Shashoua v. Sharma, 2009 EWHC 957 (Comm) : (2009) 2 Lloyd's Law Rep 376] , the Court relied on the

judgments of the Court of Appeal in C v. D [C v. D, 2008 Bus LR 843 : 2007 EWCA Civ 1282 (CA)] . (emphasis in original)

38. A reading of paras 75, 76, 96, 110, 116, 123 and 194 of Balco [Balco v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] would show that where parties have selected the seat of arbitration in their agreement, such selection would then amount to an exclusive jurisdiction clause, as the parties have now indicated that the courts at the ~~seat~~ would alone have jurisdiction to entertain challenges against the arbitral award which have been made at the seat. The example given in para 96 buttresses this proposition, and is supported by the previous and subsequent paragraphs pointed out hereinabove. The Balco [Balco v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] judgment, when read as a whole, applies the concept of ~~seat~~ as laid down by the English judgments (and which is in Section 20 of the Arbitration Act, 1996), by harmoniously construing Section 20 with Section 2(1)(e), so as to broaden the definition of ~~court~~, and bring within its ken courts of the ~~seat~~ of the arbitration [ Section 3 of the English Arbitration Act, 1996 defines ~~seat~~ as follows:

~~3.~~ The seat of the arbitration.-- In this Part ~~the~~ seat of the arbitration means the juridical seat of the arbitration designated--

(a) by the parties to the arbitration agreement, or

(b) by any arbitral or other institution or person vested by the parties with powers in that regard, or

(c) by the Arbitral Tribunal if so authorised by the parties, or determined, in the absence of any such designation, having regard to the parties' agreement and all the relevant circumstances.

It will be noticed that this section closely approximates with Section 20 of the Indian Arbitration Act, 1996. The meaning of ~~Court~~ is laid down in Section 105 of the English Arbitration Act, 1996 whereby the Lord Chancellor may, by order, make provision allocating and specifying proceedings under the Act which may go to the High Court or to county courts.].

44. If paras 75, 76, 96, 110, 116, 123 and 194 of Balco [Balco v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] are to be read together, what becomes clear is that Section 2(1)(e) has to be construed keeping in view Section 20 of the Arbitration Act, 1996, which gives recognition to party autonomy -- the Arbitration Act, 1996 having accepted the territoriality principle in Section 2(2), following 2(1)(e) was expressly rejected by the five-Judge Bench in Balco [Balco v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] . This being so, what has then to be seen is what is the effect Section 20 would have on Section 2(1)(e) of the Arbitration Act, 1996.

46. This Court in Indus Mobile Distribution (P) Ltd. [Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd., (2017) 7 SCC 678 : (2017) 3 SCC (Civ) 760] , after referring to Sections 2(1)(e) and 20 of the Arbitration Act, 1996, and various judgments distinguishing between the ~~seat~~ of an arbitral proceeding and ~~venue~~ of such proceeding, referred to the Law Commission Report, 2014 and the recommendations made therein as follows :

(SCC pp. 692-93, paras 17-20) □7. In amendments to be made to the Act, the Law Commission recommended the following:

□Amendment of Section 20

12. In Section 20, delete the word ~~place~~ and add the words ~~seat~~ and venue before the words ~~of arbitration~~ .

(i) In sub-section (1), after the words ~~Agree on the~~ delete the word ~~place~~ and add words ~~seat~~ and venue .

(ii) In sub-section (3), after the words ~~Meet at any~~ delete the word ~~place~~ and add word ~~venue~~ . [Note.--The departure from the existing phrase ~~place~~ of arbitration is proposed to make the wording of the Act consistent with the international usage of the concept of a ~~seat~~ of arbitration, to denote the legal home of the arbitration. The amendment further legislatively distinguishes between the ~~[legal]~~ seat from a ~~[mere]~~ venue of arbitration.] \*\*\* Amendment of Section 31

17. In Section 31

(i) In sub-section (4), after the words ~~Its date and the~~ delete the word ~~place~~ and add the word ~~seat~~ !

18. The amended Act, does not, however, contain the aforesaid amendments, presumably because the Balco [Balco v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] judgment in no uncertain terms has referred to ~~place~~ as ~~Juridical seat~~ for the purpose of Section 2(2) of the Act. It further made it clear that Sections 20(1) and 20(2) where the word ~~place~~ is used, refers to ~~Juridical seat~~ , whereas in Section 20(3), the word ~~place~~ is equivalent to ~~venue~~ . This being the settled law, it was found unnecessary to expressly incorporate what the Constitution Bench of the Supreme Court has already done by way of construction of the Act.

19. A conspectus of all the aforesaid provisions shows that the moment the seat is designated, it is akin to an exclusive jurisdiction clause. On the facts of the present case, it is clear makes it clear that jurisdiction exclusively vests in the Mumbai courts. Under the law of arbitration, unlike the Code of Civil Procedure which applies to suits filed in courts, a reference to ~~seat~~ is a concept by which a neutral venue can be chosen by the parties to an arbitration clause. The neutral venue may not in the classical sense have jurisdiction -- that is, no part of the cause of action may have arisen at the neutral venue and neither would any of the provisions of Sections 16 to 21 of the Code of Civil

Procedure be attracted. In arbitration law however, as has been held above, the moment ~~seat~~ is determined, the fact that the seat is at Mumbai would vest Mumbai courts with exclusive jurisdiction for purposes of regulating arbitral proceedings arising out of the agreement between the parties.

20. It is well settled that where more than one court has jurisdiction, it is open for the parties to exclude all other courts. For an exhaustive analysis of the case law, see Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd. [Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd., (2013) 9 SCC 32 : (2013) 4 SCC (Civ) 157] This was followed in a recent judgment in B.E. Simoese Von Staraburg Niedenthal v. Chhattisgarh Investment Ltd. [B.E. Simoese Von Staraburg Niedenthal v. Chhattisgarh Investment Ltd., (2015) 12 SCC 225 : (2016) 1 SCC (Civ) 427] . Having regard to the above, it is clear that Mumbai courts alone have jurisdiction to the exclusion of all other courts in the country, as the juridical seat of arbitration is at Mumbai. This being the case, the impugned judgment [Datawind Innovations (P) Ltd. v. Indus Mobile Distribution (P) Ltd., 2016 SCC OnLine Del 3744 : (2016) 158 DRJ 391] is set aside. The injunction confirmed by the impugned judgment will continue for a period of four weeks from the date of pronouncement of this judgment, so that the respondents may take necessary steps under Section 9 in the Mumbai Court. Appeals are disposed of accordingly. This judgment has recently been followed in Brahmani River Pellets Ltd. v. Kamachi Industries Ltd. [Brahmani River Pellets Ltd. v. Kamachi Industries Ltd., (2020) 5 SCC 462 : 2019 SCC OnLine SC 929 at para 15]

49. Take the consequence of the opposite conclusion, in the light of the facts of a given example, as follows. New Delhi is specifically designated to be the seat of the arbitration in the arbitration clause between the parties. Part of the cause of action, however, arises in several places, including where the contract is partially to be performed, let us say, in a remote part of Uttarakhand. If concurrent jurisdiction were to be the order of the day, despite the seat having been located and specifically chosen by the parties, party autonomy would suffer, which Balco [Balco v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] specifically states cannot be the case. Thus, if an application is made to a District Court in a remote corner of the Uttarakhand hills, which then becomes the court for the purposes By:NEHA Signing Date:16.04.2023 05:44:05 of Section 42 of the Arbitration Act, 1996 where even Section 34 applications have then to be made, the result would be contrary to the stated intention of the parties -- as even though the parties have contemplated that a neutral place be chosen as the seat so that the courts of that place alone would have jurisdiction, yet, any one of five other courts in which a part of the cause of action arises, including courts in remote corners of the country, would also be clothed with jurisdiction. This obviously cannot be the case. If, therefore, the conflicting portion of the judgment of Balco [Balco v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] in para 96 is kept aside for a moment, the very fact that parties have chosen a place to be the seat would necessarily carry with it the decision of both parties that the courts at the seat would exclusively have jurisdiction over the entire arbitral process.

50. In fact, subsequent Division Benches of this Court have understood the law to be that once the seat of arbitration is chosen, it amounts to an exclusive jurisdiction clause, insofar as the courts at that seat are concerned. In Enercon (India) Ltd. v. Enercon GmbH [Enercon (India) Ltd. v. Enercon

GmbH, (2014) 5 SCC 1 :

(2014) 3 SCC (Civ) 59] , this Court approved the dictum in Shashoua [Shashoua v. Sharma, 2009 EWHC 957 (Comm) :

(2009) 2 Lloyd's Law Rep 376] as follows : (Enercon case [Enercon (India) Ltd. v. Enercon GmbH, (2014) 5 SCC 1 : (2014) 3 SCC (Civ) 59] , SCC p. 55, para 126) □26. Examining the fact situation in the case, the Court in Shashoua case [Shashoua v. Sharma, 2009 EWHC 957 (Comm) : (2009) 2 Lloyd's Law Rep 376] observed as follows:

□The basis for the court's grant of an anti-suit injunction of the kind sought depended upon the seat of the arbitration. An agreement as to the seat of an arbitration brought in the law of that country as the curial law and was analogous to an exclusive jurisdiction clause. Not only was there agreement to the curial law of the seat, but also to the courts of the seat having supervisory jurisdiction over the arbitration, so that, by agreeing to the seat, the parties agreed that any challenge to an interim or final award was to be made only in the courts of the place designated as the seat of the arbitration.

Although, □venue was not synonymous with □seat , in an arbitration clause which provided for arbitration to be conducted in accordance with the Rules of the ICC in Paris (a supranational body of rules), a provision that □the venue of arbitration shall be London, United Kingdom did amount to the designation of a juridical seat....' In para 54, it is further observed as follows:

□There was a little debate about the possibility of the issues relating to the alleged submission by the claimants to the jurisdiction of the High Court of Delhi being heard by that Court, because it was best fitted to determine such issues under the Indian law. Whilst I found this idea attractive initially, we are persuaded that it would be wrong in principle to allow this and that it would create undue practical problems in any event. On the basis of what I have already decided, England is the seat of the arbitration and since this carries with it something akin to an exclusive jurisdiction clause, as a matter of principle the foreign court should not decide matters which are for this Court to decide in the context of an anti-suit injunction.' (emphasis in original)

59. Equally incorrect is the finding in Antrix Corp. Ltd. [Antrix Corp. Ltd. v. Devas Multimedia (P) Ltd., 2018 SCC OnLine Del 9338] that Section 42 of the Arbitration Act, 1996 would be rendered ineffective and useless. Section 42 is meant to avoid conflicts in jurisdiction of courts by placing the supervisory jurisdiction over all arbitral proceedings in connection with the arbitration in one court exclusively. This is why the section begins with a non obstante clause, and then goes on to state □..where with respect to an arbitration agreement any application under this part

has been made in a court... It is obvious that the application made under this part to a court must be a court which has jurisdiction to decide such application. The subsequent holdings of this court, that where a seat is designated in an agreement, the courts of the seat alone have jurisdiction, would require that all applications under Part I be made only in the court where the seat is located, and that court alone then has jurisdiction over the arbitral proceedings and all subsequent applications arising out of the arbitral agreement. So read, Section 42 is not rendered ineffective or useless. Also, where it is found on the facts of a particular case that either no seat is designated by agreement, or the so-called seat is only a convenient venue, then there may be several courts where a part of the cause of action arises that may have jurisdiction. Again, an application under Section 9 of the Arbitration Act, 1996 may be preferred before a court in which part of the cause of action arises in a case where parties have not agreed on the seat of arbitration, and before such seat may have been determined, on the facts of a particular case, by the Arbitral Tribunal under Section 20(2) of the Arbitration Act, 1996. In both these situations, the earliest application having been made to a court in which a part of the cause of action arises would then be the exclusive court under Section 42, which would have control over the arbitral proceedings. For all these reasons, the law stated by the Bombay and Delhi High Courts in this regard is incorrect and is overruled.

82. On a conspectus of the aforesaid judgments, it may be concluded that whenever there is the designation of a place of arbitration in an arbitration clause as being the venue of the arbitration proceedings, the expression arbitration proceedings would make it clear that the venue is really the seat of the arbitral proceedings, as the aforesaid expression does not include proceedings as a whole, including the making of an award at that place. This language has to be contrasted with language such as tribunals are to meet or have witnesses, experts or the parties where only hearings are to take place in the venue, which may lead to the conclusion, other things being equal, that the venue so stated is not the seat of arbitral proceedings, but only a convenient place of meeting. Further, the fact that the arbitral proceedings shall be held at a particular venue would also indicate that the parties intended to anchor arbitral proceedings to a particular place, signifying thereby, that that place is the seat of the arbitral proceedings. This, coupled with there being no other significant contrary indicia that the stated venue is merely a venue and not the seat of the arbitral proceedings, would then conclusively show that such a clause designates a seat of the arbitral proceedings. In an international context, if a supranational body of rules is to govern the arbitration, this would further be an indicia that the venue, so stated, would be the seat of the arbitral proceedings. In a national context, this would be replaced by the Arbitration Act, 1996 as applying to the stated venue, which then becomes the seat for the purposes of arbitration.

8. As was duly recognized by the Supreme Court in the aforesaid decision, an exclusive jurisdiction clause would itself be indicative of the stipulation of a seat of arbitration in the absence of any indication to the contrary. As this Court reads the

principal agreement it is manifest that there was an exclusive jurisdiction clause which stood incorporated, was accepted by the parties and which clearly designated Ghaziabad as the particular place to which all arbitral and legal proceedings connected therewith would stand centred. In that view of the matter, the Court finds itself unable to sustain the submission that the principal agreement did not indicate a seat.

9. Insofar as the submission seeking to draw sustenance from the tax invoices is concerned, it may only be noted that merely because the same were acknowledged or payments were made in connection therewith that would not really constitute an agreement between the parties to consciously modify the seat of arbitration. In any case, a seat could not have been unilaterally designated nor could it be said to have been modified by issuance of the invoices.

10. Accordingly and for all the aforesaid reasons, the instant petition preferred before this Court shall stand dismissed with liberty reserved to the petitioner to approach the Allahabad High Court, if so chosen and advised.

YASHWANT VARMA, J.

APRIL 12, 2023 rsk