

Commercial Courts Act, 2015

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The Commercial Courts Act, 2015

An Act to provide for the constitution of Commercial Courts, 1[Commercial Appellate Courts,] Commercial Division and Commercial Appellate Division in the High Courts for adjudicating commercial disputes of specified value and matters connected therewith or incidental thereto. BE it enacted by Parliament in the Sixty-sixth Year of the Republic of India.

Objects:

Phenomenal changes have taken place in the country of India resulting to privatization, liberalization and globalization. Tremendous economic development has ushered in enormous commercial activities including foreign direct investments and public- private partnership. Commercial transactions have contributed for increase in commercial disputes. It is required to create a positive image about the independent and responsive Indian Legal system. This has prompted the Union of India to take new measures for speedy resolution of commercial disputes, widening the scope of the courts to deal with commercial disputes and facilitate ease of doing business in India. The above act has come into effect from 23.10.2015 for speedy resolution of commercial disputes of the high value of Rs. One Crore and above and to establish Commercial Courts at the District Judge Level and Commercial Division and Commercial Appellate Division in the High Courts.

In this regard the decision in the case of **Dolby International A.B. and Another Vs. Das Telecom Pvt. Ltd. and Others** reported in **2018 SCC Online Del 7615**.

Ease of doing business:

Ease of doing business is an index published by the World Bank. A high ranking means the regulatory and economic environment is more conducive for business and commercial investment. It is an indication of a business friendly country. Rating includes criteria like public confidence in investment, enforcing contracts, trading across borders, resolving insolvency etc.,

In view of Report No. 188 and 253 of Law Commission of India made a way to the above said enactment.

Salient Features:

1. Constitution of Commercial Courts at District level and below.
2. Commercial Appellate Court.
3. Commercial Division in High Court having ordinary Civil Jurisdiction.
4. Commercial Appellate Division.
5. Defining types of disputes which are commercial disputes.
6. Specified value of the dispute to be Rs.3,00,000/- and above.
7. Compulsory pre institution mediation mechanism.
8. Strengthening and introducing procedure for early resolution of disputes, viz;

Costs, imposition of heavy costs for delay by a party;

Pleadings should be specific and focused;

Written statement to be filed within 120 days or else forfeiture of the right to file;

Summary Judgment on certain claims;

Discovery of documents;

Inspection of documents;

Admission and denial of documents;

Case management hearing;

Recording of evidence, process streamlined;

Redacting of evidence, power to Court to eliminate;

Time bound arguments;

Time bound disposal;

Appeal to Commercial Appellate Court;

No second appeal.

2. Definitions.-

(1) In this Act, unless the context otherwise requires,-

3[(a) "Commercial Appellate Courts" means the Commercial Appellate Courts designated under section 3A;]

4[(aa)] "Commercial Appellate Division" means the Commercial Appellate Division in a High Court constituted under sub-section (1) of section 5;

(b) "Commercial Court" means the Commercial Court constituted under sub-section (1) of section 3;

(c) "commercial dispute" means a dispute arising out of-

(i) ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents;

The very purpose for which the CC Act of 2015 has been enacted would be defeated, if every other suit merely because it is filed before Commercial Court is entertained. This is very clear from the decision in the case of **Ambala Sarabhai Enterprises Limited Vs. K.S. Infraspac LLP and Another** in **Civil Appeal No. 7843 / 2019** dated 04.10.2019.

In the case of **Deepdharshan Builders Pvt. Ltd Vs. Saroj and Three Others** reported in **2018 SCC Online Bom 4885**, it is held that whether a particular dispute to immovable property falls within the meaning of Sec.2(1)(C) is not far from difficulty. If it falls under sub clause 7 of the definition, namely, agreements relating to immovable property used exclusively in trade and commerce, there is no difficulty. Such agreement shall be in respect of land which is used as a stock in trade in such trade or commerce, to fall within the sub clause. If the dispute arises out of a development agreement pertaining to development and consequent sale thereof,

it is held to be a commercial dispute within the meaning of this section.

The Commercial Court would have exclusive jurisdiction if both commercial dispute and specified value concurred to exist and not just one of them. Refer the edition in the case of **Fine Footwear Private Limited, Bangalore vs. Skechers U.S.A. Inc, California and Others**, reported in **2019(3) AKR 703: 2019(5) Kar:LJ 358**.

Summary of Decisions:

Commercial means involving or relating to commerce. A merchant is a person who owns or runs a shop, store, or other business. Is a person who buys and sells goods, currency, or shares. Similar examples are dealer, buyer, seller, salesman, marketer, merchandiser, broker, agent, businessman, distributor, vendor, purveyor, supplier, trafficker. Trader is a person who buys and sells goods, currency or shares; selling and buying is called a trade and the persons who engage in that are traders. A shop keeper, retailer, wholesaler, stockiest, runner, pusher, peddler, hawker, etc., are traders.

A transaction is an agreement between a buyer and a seller to exchange goods, services or financial instruments. Mercantile means relating to or involved in trade. Mercantile documents are those relating to trade; invoice, delivery receipts, purchase orders, letter of credit, bills etc., maintained and issued by the trader during the process of transactions are mercantile documents.

It implies that any dispute arising out of above, relating to mercantile documents, including enforcement and interpretation of such documents of merchants, bankers, financiers and traders shall come within the definition of commercial disputes. Therefore, the ordinary transactions of the above persons for within the ambit of the act.

Examples: All types of loans lent by Bankers or Financiers, purchases based upon invoices or purchase orders.

(ii) export or import of merchandise or services;

Comments:

A merchandiser is a person or a company that sells goods to the public;

Examples: The services attached to tourism, banking and accountancy etc. Services are mainly intangible and usually consumed concurrently with their production. Supply of gas, water, electricity, telecommunication etc.,

(iii) issues relating to admiralty and maritime law;

Comments:

Admiralty Law or Maritime Law is a body of law that governs nautical issues and private maritime issues.

(iv) transactions relating to aircraft, aircraft engines, aircraft equipment and helicopters, including sales, leasing and financing of the same;

(v) carriage of goods;

Comments:

Goods can be carried by land (including inland waterways), Sea, Air or a combination of all these modes of transportations. Different laws govern such different modes of carriage of goods; namely, Carriage by Road Act, 2007, the Railways Act 1989, the carriage by Air Act 1972, the (Indian) Bills of Lading Act 1856, the carriage of goods by Sea Act, 1925; the Merchant Shipping Act, 1958, for multi – modal transportation of goods, the multi- modal transportation of Goods Act 1993 came into force from March 1, 2011, superseding Erstwhile Carriers Act 1865.

(vi) construction and infrastructure contracts, including tenders;

Comments:

The Specific Relief Act 1963 has been amended with effect from 01.10.2018. The schedule refers to infrastructure projects. This act deals with infrastructure contracts under the definition of commercial disputes. Suffice it to say that Commercial Courts has no jurisdiction in respect of infrastructure projects defined under Schedule 2 in Act No.18/2018 of Specific Relief Act 1963. The

infrastructure contract excluding those referred above, the jurisdictions vest to the Commercial Courts.

(vii) agreements relating to immovable property used exclusively in trade or commerce;

Comments:

Sec. 2(e) of the Indian Contract Act, 1872 defines agreement as every promise and every set of promise, forming consideration for each other. Sec. 2(26) of the General Clauses Act, 1897 defines immovable property to include land benefits to arise out of land, and things attached to earth, or permanently fasten to anything attached to the earth.

The Hon'ble Apex Court in **Ambalal Sarabai Enterprises Ltd., V/s K.S. Infra LL.B and another** reported in **2019 SCC online SC 1311**, while dealing with an appeal in respect of a commercial suit filed at Vadodara has held that "It cannot be said that the agreement is as such relating to immovable property used exclusively in Trade or Commerce. Supreme Court has negated the contention of the plaintiff that Clause (vii) of Sec. 2(c), the phraseology used is not actually used or being used and therefore, even if at present the plot is not used and even if it is likely to be used even in future, in that case also Sec.2(c)(vii) shall be applicable and therefore Commercial Court would have jurisdiction; the Supreme Court while interpreting Sec. 2(c), has held that literal and strict interpretation as to be applied; it may be noted that the

important word used in the relevant provisions are immovable property used in the relevant provisions are 'Immovable property used exclusively in trade or commerce'. It is clear that the expression used must mean actually 'used' or 'being used'; if the intention of the legislature was to expand the scope, in that case the phraseology used would have being different as for example 'likely to be used' or 'to be used'. The word denotes actually used and it cannot be said to be either ready for 'use' or 'likely to be used' or 'to be used'.

Examples:

1. The landlord has let out the premises to a tenant for running a kirana store; any dispute relating to recovery of rent from the tenant shall be a dispute falling within the definition of Sec.2(1)(c)(vii) of the CC Act. The activity carried on by the tenant for running the kirana store which is meant for trade, the same shall be relating to trade as defined under the CC Act.
2. In the above example, if the landlord intends to evict the tenant from the premises, the premises being an immovable property used exclusively in trade and since it is for recovery of immovable property involving any other relief pertaining to immovable property, the suit for ejectment shall be filed before the Commercial Court.
3. The landlord has let out the premises to the tenant for running an industry in an immovable property. As a part of

the same agreement, the landlord has also provided managerial quarters to the tenant, which the tenant has been using and he runs the industry and the residential quarters is in his personal occupation. Now, there is a dispute between the landlord and the tenant with respect to the management of the industry and also with regard to the rent of the premises in question; no doubt it's a agreement for immoveable property for running trade namely industry, but the question is providing for a residential quarters in an industry, whether the agreement is exclusively for trade or commerce?. The intention of the legislation has to be borne in mind for the above purpose.

4. The landlord has let out a residential premises for a tenant, dentist; in a portion of the said residence, the tenant is using the premises for running his dental clinic; whether the user of premises for dental clinic deviates the objective of the user of the main premises for residential use. Since, the main purpose is for residential, the dispute with regard to recovery of rent, eviction etc., does not fall within the purview of commercial dispute and Commercial Court.
5. A suit for decree of specific performance in respect of an agreement for purchase of an agricultural property does not fall within the definition of commercial dispute.

(viii) franchising agreements;

Comments:

Franchising is an arrangement where franchisor grants or licenses some rights and authorities to franchisee. In return, the franchisee pays a one time fee or commission to franchiser and some share of revenue. Franchising is a well known marketing strategy for business expansion.

Examples:

1. ABC is a leading educational academy which has multiple franchises and earns royalty through licensing its trade mark and copy righted course material.
2. XYZ coffee brand which has achieved a pan India presence with limited investment by franchising. The franchises not only operate under the brand name but also access proprietary information on their successful business modals and unique brews.

(ix) distribution and licensing agreements;

Examples:

1. Company A enters into an agreement with company B to act as the distributor of their software in country Z. They are also licensed by the contract to act as service providers for such product and address consumer grievances.
2. Company A runs a chain of cafe's. Their coffee brew is unique and has grown in popularity. Company B, Manufacturer,

enters into a contract with them and gets the license to package and sell such a brew across the country.

3. Company A enters into an agreement with company B to act as the distributor of their cars in country B. They are also licensed by the contract to act as service providers for the products, address consumer grievances and make necessary modifications to the vehicle.
4. A tyre manufacturing company needs to sell its goods to the market. The distributor networks through retail outlets, or points of sale, stock points, carrying and forwarding agents, wholesalers, retailers and consumers. In short, it involves the distributor who spreads its products wider and faster into the market place at lower costs, at a competitive price. The distributor works for the marketing and selling of the manufacturer.

(x) Management and consultancy agreements;

Comments:

A consultancy contract is entered into between an independent contractor and a client company for availing professional service in a specific are of work in which the consultant has expertise.

Examples:

1. A company has established a chain of hotels in country A. The company hires a consultant to assist in strategic planning for the expansion of its business into country B.

2. A company has established a new subsidiary. Due to the limited amount of workforce, it outsources its accountancy and legal compliance work to professional consultants.
3. A company has been running losses. It hires a consultant to identify cost saving opportunities in its everyday operations.
4. A reputed educational institution enters into an arrangement with a retired educationist to carry on its educational activity, in its institution; the educationist adopts his syllabus, teaching mechanism, employees etc. and manages the day to day administration of the school.
5. Similarly, a sports academy runs a regular training course for shuttle player, who runs the day to day training schedule in the Academy, for a management fee.
6. A developer or a builder, who is in to infrastructure contracts, engages the services of a layout designer, architect, structural engineer, to advise it on technical aspects, on commercial basis, for projects or term basis.

(xi) joint venture agreements;

Comments:

A joint venture, popularly known as JV is a tactical partnership where two or more people or companies agree to put in goods, services and/or capital to a uniform commercial project.

Examples:

1. A hotel and a hospital enter into a joint venture agreement to provide quarantine facility during the pandemic. The hotel provides the infrastructure for housing the patients while the hospital provides medical service through teleconferencing and institutional support.
2. A bank and insurance company form a joint venture to provide special concessional insurance cover to the bank customers.
3. Two business conglomerates enter into a joint venture agreement to combine their R&D expertise to speed up innovations in the renewable energy sector.
4. An owner of land contracts with a developer to construct multi storied residential apartment complex with equal sharing rights, in the apartments to be developed; owner also executes general power of attorney in favour of the developer, for construction and conveyance of the completed residential apartments in favour of intending purchasers of the residential apartments; this arrangement is a joint venture project. Any disputes arising between the owner and the developer or the purchaser are commercial disputes for the purpose of this clause. The nature or the purpose of construction though is for residential apartments, the work being joint venture all the disputes arising out of the joint venture are commercial disputes. The Act recognizes certain works and its nature and therefore purpose of the venture is not the criteria for determining the scope of the dispute.

(xii) shareholders agreements;

Comments:

Shareholder Agreements are contracts between a company and the shareholders of a company outlining the rights, privileges and protections available and obligations imposed on the shareholder. Such agreements ensure fair pricing of shares and also act as safeguards of minority interest by making shareholders an integral part of decision making and by keeping companies accountable.

(xiii) subscription and investment agreements pertaining to the services industry including outsourcing services and financial services;

Comments:

Subscription and Investor Agreements – An investment agreement is between a company and individuals wishing to purchase an ownership in the company. The purchaser may be an existing shareholder or outside investor.

Examples:

1. Two entities enter into an investor agreement for real estate development. One of them invests the capital while the other acts as the developer.

2. A private company raises equity by offering shares to its members. A subscription agreement is executed in this regard.

(xiv) mercantile agency and mercantile usage;

Comments:

Mercantile Agency and Mercantile Usage – Mercantile Agency contracts between a commercial agent and his principal empower the agent to sell goods, consign goods for sale, buy goods and pledge such goods to raise money on behalf of the principal. It is the agency of a factor who in the customary course of his business has the authority to bind his principal.

Examples:

1. A engages a broker to find buyers for his car which he intends to sell before moving to another city.
2. B engages an auctioneer to sell his Paintings to the highest bidder.

(xv) partnership agreements;

Comments:

Partnership agreements constitute a commercial dispute; all disputes coming under the Indian Partnership Act 1932, being the disputes between the partners in respect of Partnership Agreements, they are all commercial disputes.

(xvi) technology development agreements;

Comments:

Technology is a process, method, system, or device by scientific source or knowledge for gaining practical benefit. To name a few, computer technology, cutting-edge technology, digital technology, embrace technology, engine technology, green technology, hybrid technology, medical technology, modern technology, nuclear technology, recognition technology, wireless technology. All nature of agreements executed for development of technology fall within the ambit of this clause.

(xvii) intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design, domain names, geographical indications and semiconductor integrated circuits;

Comments:

Intellectual property is a product of human intelligence including creative concepts, inventions, industrial modules, brands, trademark, sound etc. When a person puts hard labour, evolves something new or he invents something new, it generally begins with an idea and ultimately culminates into a product; the owner of the said product is entitled for the benefits of intellectual property rights; the owner of the product would be entitled to prevent others from imitating or using the product without his prior permission; the owner can sue such a person and restrain him by an order of injunction from either using or imitating and to sell the products

and also can sue for damages for the same. Intellectual Property laws in India broadly cover the following: Trade Marks Act, 1999, Copy Rights Act, 1957, The Patents Act, 1970, The Designs Act, 2000, etc.,

(xviii) agreements for sale of goods or provision of services;

Comments:

Agreements for Sale of Goods or Provision of Services – A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the goods to the buyer for consideration. If such transfer is to take place on a future date or subject to the fulfillment of a condition, would be an ‘agreement to sell’ rather than a sale. An agreement for the provision of services or a service agreement is an agreement under which one party agrees to provide a specific service to another in exchange for consideration.

Examples:

1. A buys a car from B
2. Company A avails telecom services from Company B
3. A enters into a contract with a real estate developer to buy a villa.

(xix) exploitation of oil and gas reserves or other natural resources including electromagnetic spectrum;

Comments:

The entire range of wavelengths or frequencies of electromagnetic radiation extending from gamma rays to the longest

radio waves and including visible light are electromagnetic spectrum. Radio waves for instant communication, microwaves for data and heat, infrared for invisible heat, visible light rays, ultraviolet waves for energetic Light, x-rays for penetrating radiation are some types of electromagnetic rays.

(xx) insurance and re-insurance;

Comments:

Insurance is a term in law and economics. It is purchased to protect themselves from losing money and a means of protection from financial loss. It is a form of risk management, primarily used to protect against the risk of a contingent or uncertain future loss. The insurer indemnifies the insured. The amount of money charged by the insurer to the policy holder for the coverage set forth in the insurance policy is the premium. Life insurance, general insurance, health insurance, motor vehicle insurance, travel insurance, accident insurance home insurance, fire accident insurance are some of the insurances.

(xxi) contracts of agency relating to any of the above; and

Comments:

Contracts of Agency – A contract of agency can be express or implied and may or may not be for consideration. Chapter X of the Indian Contract Act, 1872 deals with the laws relating to Agency. Most business transactions are carried out through agency and are

an important area of commercial law. Relationships relating to principal and agent involve three main parties, i.e., the principal, the Agent, and a third Party. General agent, special agent, sub agent, agency coupled with an interest, and servant are few types of agencies.

(xxii) such other commercial disputes as may be notified by the Central Government.

Explanation.- A commercial dispute shall not cease to be a commercial dispute merely because-

(a) it also involves action for recovery of immovable property or for realisation of monies out of immovable property given as security or involves any other relief pertaining to immovable property;

(b) one of the contracting parties is the State or any of its agencies or instrumentalities, or a private body carrying out public functions;

If a dispute is a commercial dispute within the meaning of Sec.2(1)(C) of the Act. It shall not cease to be commercial dispute merely because of one of the contracting parties is a State or any of its agencies or instrumentalities, or a private body carrying out public functions.

Following are held to be not commercial disputes:

1. Suit is for recovery of damages for loss suffered on account of damage to the aircraft.
2. Suit for specific performance of agreement to develop land.

3. Suit to quash and set aside the sale deed executed in favour of respondent on the basis of the order passed in probate proceedings and on the basis of the Will, with respect to immovable properties a succession certificate was issued.

4. Suit for ejectment from property illegally used, exclusively in trade or commerce, with the consent of plaintiff.

5. Suit for cancellation of a Power of Attorney, even if with respect to an immovable property used exclusively in trade or commerce and as part of a transaction of sale of such property.

6. Suit for recovery of money to be deposited in Court, for release of title documents lying deposited by way of equitable mortgage.

7. Suit for specific performance of an Agreement of Sale and for permanent injunction restraining the defendants from selling or transferring the property not used exclusively for trade or commerce purpose.

8. Dispute arose out of sale deeds.

9. Agreement/indenture of lease in respect of residential flats.

(d) "Commercial Division" means the Commercial Division in a High Court constituted under sub-section (1) of section 4;

(e) "District Judge" shall have the same meaning as assigned to it in clause (a) of article 236 of the Constitution of India;

(f) "document" means any matter expressed or described upon any substance by means of letters, figures or marks, or electronic

means, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter;

(g) "notification" means a notification published in the Official Gazette and the expression "notify" with its cognate meanings and grammatical variations shall be construed accordingly;

(h) "Schedule" means the Schedule appended to the Act; and

(i) "Specified Value", in relation to a commercial dispute, shall mean the value of the subject-matter in respect of a suit as determined in accordance with section 12 1[which shall not be less than three lakh rupees] or such higher value, as may be notified by the Central Government.

(2) The words and expressions used and not defined in this Act but defined in the Code of Civil Procedure, 1908 (5 of 1908) and the Indian Evidence Act, 1872 (1 of 1872), shall have the same meanings respectively assigned to them in that Code and the Act.

1. Ins. by Act 28 of 2018, s. 2 (w.e.f. 3-5-2018).

2. Subs. by s. 3, *ibid.*, for sub-section (1) (w.e.f. 3-5-2018).

3. Ins. by s. 4, *ibid.*, (w.e.f. 3-5-2018).

4. Clause (a) renumbered as clause (aa) by s. 4, *ibid.*, (w.e.f. 3-5-2018).

1. Subs. by Act 28 of 2018, s. 4, for "which shall not be less than one crore rupees" (w.e.f. 3-5-2018).

Chapter II

1[Commercial Courts, Commercial Appellate Courts, Commercial Divisions and Commercial Appellate Divisions].

3. Constitution of Commercial Courts.-

(1) The State Government, may after consultation with the concerned High Court, by notification, constitute such number of Commercial Courts at District level, as it may deem necessary for the purpose of exercising the jurisdiction and powers conferred on those Courts under this Act:

2[Provided that with respect to the High Courts having ordinary original civil jurisdiction, the State Government may, after consultation with the concerned High Court, by notification, constitute Commercial Courts at the District Judge level: Provided further that with respect to a territory over which the High Courts have ordinary original civil jurisdiction, the State Government may, by notification, specify such pecuniary value which shall not be less than three lakh rupees and not more than the pecuniary jurisdiction exercisable by the District Courts, as it may consider necessary.]

3[(1A) Notwithstanding anything contained in this Act, the State Government may, after consultation with the concerned High Court, by notification, specify such pecuniary value which shall not be less than three lakh rupees or such higher value, for whole or part of the State, as it may consider necessary.];

(2) The State Government shall, after consultation with the concerned High Court specify, by notification, the local limits of the

area to which the jurisdiction of a Commercial Court shall extend and may, from time to time, increase, reduce or alter such limits.

(3) The 4[State Government may], with the concurrence of the Chief Justice of the High Court appoint one or more persons having experience in dealing with commercial disputes to be the Judge or Judges, of a

5[Commercial Court either at the level of District Judge or a court below the level of a District Judge].

6[3A. Designation of Commercial Appellate Courts.-

Except the territories over which the High Courts have ordinary original civil jurisdiction, the State Government may, after consultation with the concerned High Court, by notification, designate such number of Commercial Appellate Courts at District Judge level, as it may deem necessary, for the purposes of exercising the jurisdiction and powers conferred on those Courts under this Act.]

4. Constitution of Commercial Division of High Court.-

(1) In all High Courts, having 7[ordinary original civil jurisdiction], the Chief Justice of the High Court may, by order, constitute Commercial Division having one or more Benches consisting of a single Judge for the purpose of exercising the jurisdiction and powers conferred on it under this Act.

(2) The Chief Justice of the High Court shall nominate such Judges of the High Court who have experience in dealing with commercial disputes to be Judges of the Commercial Division.

5. Constitution of Commercial Appellate Division.-

(1) After issuing notification under subsection (1) of section 3 or order under sub-section (1) of section 4, the Chief Justice of the concerned High Court shall, by order, constitute Commercial Appellate Division having one or more Division Benches for the purpose of exercising the jurisdiction and powers conferred on it by the Act. (2) The Chief Justice of the High Court shall nominate such Judges of the High Court who have experience in dealing with commercial disputes to be Judges of the Commercial Appellate Division.

1. Subs. by Act 28 of 2018, s. 5, for "CONSTITUTION OF COMMERCIAL COURTS, COMMERCIAL DIVISIONS AND COMMERCIAL APPELLATE DIVISIONS" (w.e.f. 3-5-2018).

2. Subs. by s. 6, *ibid.*, for the proviso (w.e.f. 3-5-2018).

3. Ins. by s. 6, *ibid.*, (w.e.f. 3-5-2018).

4. Subs. by s. 6, *ibid.*, for "State Government shall" (w.e.f. 3-5-2018).

5. Subs. by s. 6, *ibid.*, for "Commercial Court, from amongst the cadre of Higher Judicial Service in the State" (w.e.f. 3-5-2018).

6. Ins. by s. 7, *ibid.*, (w.e.f. 3-5-2018).

7. Subs. by s. 8, *ibid.*, for "ordinary civil jurisdiction" (w.e.f. 3-5-2018).

6. Jurisdiction of Commercial Court.-

The Commercial Court shall have jurisdiction to try all suits and applications relating to a commercial dispute of a Specified Value arising out of the entire territory of the State over which it has been vested territorial jurisdiction.

Explanation.-For the purposes of this section, a commercial dispute shall be considered to arise out of the entire territory of the State over which a Commercial Court has been vested jurisdiction, if the suit or application relating to such commercial dispute has been instituted as per the provisions of sections 16 to 20 of the Code of Civil Procedure, 1908 (5 of 1908).

The written statement in a commercial suit shall be filed within 120 days. There is no discretion to condone the delay beyond 120 days. Refer the decision in the case of **Desh Raj Vs. Balkishan (dead through LRs.)** reported in **(2020) 2 SCC 708**. It is further held that, unless extreme hardship or delays occurring due to factors beyond control of parties despite pro-active diligence may be just and equitable instances for condonation of delay.

Commercial Court has to consider facts as to when cause of action arose, stage at which plaintiff instituted filing suit when it moved for hearing before granting ex parte injunction relating to copyright infringement suit. Refer the edition in the case of **Kinjol Lalit Bhai Dave vs. Red Ribbon Entertainment Private Limited – AIR 2019 Gujarat 86 (DB)**.

7. Jurisdiction of Commercial Divisions of High Courts.-

All suits and applications relating to commercial disputes of a Specified Value filed in a High Court having ordinary original civil jurisdiction shall be heard and disposed of by the Commercial Division of that High Court: Provided that all suits and applications relating to commercial disputes, stipulated by an Act to lie in a court not inferior to a District Court, and filed or pending on the original side of the High Court, shall be heard and disposed of by the Commercial Division of the High Court: Provided further that all suits and applications transferred to the High Court by virtue of sub-section (4) of section 22 of the Designs Act, 2000 (16 of 2000) or section 104 of the Patents Act, 1970 (39 of 1970) shall be heard and disposed of by the Commercial Division of the High Court in all the areas over which the High Court exercises ordinary original civil jurisdiction.

8. Bar against revision application or petition against an interlocutory order.-

Notwithstanding anything contained in any other law for the time being in force, no civil revision application or petition shall be entertained against any interlocutory order of a Commercial Court, including an order on the issue of jurisdiction, and any such challenge, subject to the provisions of section 13, shall be raised only in an appeal against the decree of the Commercial Court.

Comments:

Any dispute as to the jurisdiction, namely, about the territorial jurisdiction, maintainability or rejection of the Commercial suit, if filed and there is an order passed by the Commercial Court with regard to the same, no Civil Revision application or petition shall be entertained against the said interlocutory order and therefore such order operates as final. The party being aggrieved by passing of such order on jurisdiction or maintainability etc., may challenge the interlocutory order only after final disposal, if he is aggrieved in the appeal filed against the order of Commercial Court. However, nothing prevents the person aggrieved to challenge the order under Article 227 of Constitution, before the High Court and the High Court may always exercise its supervisory jurisdiction.

9. [Transfer of suit if counterclaim in a commercial dispute is of Specified Value].-

Omitted by the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Act, 2018 (28 of 2018), s. 9 (w.e.f. 3-5-2018)

10. Jurisdiction in respect of arbitration matters.-

Where the subject-matter of an arbitration is a commercial dispute of a Specified Value and-

(1) If such arbitration is an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996)

that have been filed in a High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court.

(2) If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that have been filed on the original side of the High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court.

(3) If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that would ordinarily lie before any principal civil court of original jurisdiction in a district (not being a High Court) shall be filed in, and heard and disposed of by the Commercial Court exercising territorial jurisdiction over such arbitration where such Commercial Court has been constituted.

Where the subject matter of an arbitration is not a commercial dispute, it will not fall under the definition of commercial dispute so as to attract the jurisdiction of Commercial Court.

Example:

1. The agreement is between the owner of the house property and interior designer engaged for renovation, designing and

refurbishing; the dispute having arisen, with arbitration being dispute resolution clause, arbitrator passed an award. The challenge of the award, out of above contract being not out of a commercial dispute falling within the definition, such application or appeals shall be heard and disposed by the Civil Court and not by Commercial Court established under the Act.

11. Bar of jurisdiction of Commercial Courts and Commercial Divisions.-

Notwithstanding anything contained in this Act, a Commercial Court or a Commercial Division shall not entertain or decide any suit, application or proceedings relating to any commercial dispute in respect of which the jurisdiction of the civil court is either expressly or impliedly barred under any other law for the time being in force.

Comments:

This is analogous to Section 9 of CPC, 1908. The suits of which there cognizance either expressively or impliedly barred under Sec.9 CPC shall not be entertained or decided in any suit or application or proceedings relating to commercial dispute. The bar of suits applicable to Civil Court applies to Commercial Court too.

Sec.11 of the Act envisages that Commercial Courts or Commercial Division shall not entertain or decide any suit, application or proceedings relating to commercial disputes in respect of which the jurisdiction of Civil Court is expressly or

impliedly barred under any other law for the time being in force. Therefore, the definition of commercial dispute though is applicable to Bankers and Financiers, the same is limited to specified value, the subject matter of which is not more than Rupees Twenty Lakhs. If the specified value of the subject matter or the dispute is more than Rupees Three Lakhs but less than Rupees Twenty Lakhs, dispute would lie before the Commercial Court and if the specified value of the subject matter of the dispute is more than Rupees Twenty Lakhs, the remedy is only to approach Debts Recovery Tribunal.

If there is a clause of conciliation as dispute resolution clause then the disputes are barred from Commercial Courts. If a party under the conciliation agreement rejects the invitation to conciliation then there is no bar either to approach Commercial Court or Pre Institution Mediation under Chapter 3(a) of the Act.

Chapter III

Specified Value

12. Determination of Specified Value.-

(1) The Specified Value of the subject-matter of the commercial dispute in a suit, appeal or application shall be determined in the following manner:-

(a) Where the relief sought in a suit or application is for recovery of money, the money sought to be recovered in the suit or application inclusive of interest, if any, computed up to the date of

filing of the suit or application, as the case may be, shall be taken into account for determining such Specified Value;

(b) Where the relief sought in a suit, appeal or application relates to movable property or to a right therein, the market value of the movable property as on the date of filing of the suit, appeal or application, as the case may be, shall be taken into account for determining such Specified Value;

(c) Where the relief sought in a suit, appeal or application relates to immovable property or to a right therein, the market value of the immovable property, as on the date of filing of the suit, appeal or application, as the case may be, shall be taken into account for determining Specified Value; 1[and] (d) where the relief sought in a suit, appeal or application relates to any other intangible right, the market value of the said rights as estimated by the plaintiff shall be taken into account for determining Specified Value; 23

(2) The aggregate value of the claim and counterclaim, if any as set out in the statement of claim and the counterclaim, if any, in an arbitration of a commercial dispute shall be the basis for determining whether such arbitration is subject to the jurisdiction of a Commercial Division, Commercial Appellate Division or Commercial Court, as the case may be.

(3) No appeal or civil revision application under section 115 of the Code of Civil Procedure, 1908 (5 of 1908), as the case may be, shall lie from an order of a Commercial Division or Commercial Court

finding that it has jurisdiction to hear a commercial dispute under this Act.

Comments:

Specified value is the valuation of the subject matter of the suit/appeal/application and it shall not be less than Rupees three lakhs as provided under Section 2 (1)(i) of the Act.

The specified value shall be determined as per this section.

- a) In a suit for recovery of money, the money sought inclusive of interest, up to the date of filing of the suit;
- b) Relating to a moveable property or right therein, the market value of the said moveable property, at the time of filing the suit;
- c) Relating to an immovable property or right therein, the market value of such immovable property at the time of filing of the suit;
- d) Relating to any other intangible right, market value of such right at the time of filing, as estimated by the plaintiff.

Specified Value:

Section 2(1)(c) of the Act defines commercial dispute as one arising out of transactions enumerated in sub-clause (i) to (xxi) therein. Act No.4 of 2016 came into effect from 23/10/2015 and for the specified value of Rupees One Crore and above.

Now, by virtue of Act No.28 of 2018, the specified value is reduced to rupees three lakhs with retrospective effect from

03/05/2018. The commercial disputes of the specified value of Rupees 3,00,000 and above but below rupees one crore filed before 03/05/2018 cannot be entertained by commercial courts, as Section 19 of Act No.28 of 2018 specifies that the provisions of the amended Act are prospective.

Sec.3 (1-A) envisages that the State Government may after consultation with the concerned High Court, by notification specify such pecuniary value (specified Value) which shall not be less than Rs.3 lakhs in respect of certain region at such higher value as it may consider necessary. In other words, the floor pecuniary limit cannot be less than Rs.3 lakhs whereas it can prescribe higher floor limit as minimum pecuniary value for whole or part of the State.

Court fee Valuation

The valuation for the purposes for determining the specified value and the Court fee payable are different. The specified value determines the pecuniary limit whereas the Court fee valuation determines the Court fee payable on the plaint.

Intangible right:

Valuation by the plaintiff:

In a plaint presented before the Civil Court relating to a commercial dispute, but where the “specified value” is valued less than Rupees Three Lakhs, the plaintiffs valuation shall be accepted and the defendant cannot question the jurisdiction of the suit, on the ground that the plaintiff has deliberately undervalued the suit to avoid filing it before the commercial court.

Court Fee payable:

There is no special mention about the court fee payable on a dispute filed under the provisions of Commercial Court Act 2015; the provisions of Court Fees Act as applicable shall be applicable to the suits, appeals and applications filed under the Commercial Courts Act.

Limitation:

Likewise, there is no special clause or provision with respect to the applicability of Limitation Act, except in so far as what has been envisaged under Chapter III-A, applicable with effect from 03.05.2018. The proviso to clause 3 of Section 12-A in Chapter III-A provides that the period during which the parties remained occupied with the Pre-Institution Mediation, such period shall not be computed for the purpose of limitation under the Limitation Act, 1963 (Central Act No.36/1963). Otherwise the limitation as applicable to the suits, appeals and application are also applicable to the Commercial Court. The Commercial Court is also a Civil Court and therefore too, the Court Fee and Limitation applicable to the Courts are applicable to the Commercial Courts.

Examples

1. **Suit for ejectment:** A suit filed by the landlord for termination of the lease of the tenant from the premises used for trade or commerce, shall be a commercial dispute. It falls under the purview of sub clause (vii) of clause (c) of Section 2

of the Act. The market value of the immovable property as on the date of filing of the suit shall be the specified value.

2. **Suit for declaration in respect of an immovable property:** A suit is filed under Section 34 of The Specific Relief Act, 1963. The relief is for declaration in respect of an immovable property. Market value of the immovable property shall be the specified value.
3. **Suit for recovery of rent filed by the landlord against the tenant:** The tenant is carrying on a mobile showroom business in the demised premises on the monthly rent of Rs.5,000.00. The tenant is in arrears of rent amounting to Rs.75,000.00. The market value of the premises is more than Rs.3 lakhs. But, the valuation of the Court fee for the purposes of Court fee is Rs.75,000.00.

The Act is completely silent about the Court fee payable on suits and appeals, hence it follows as a corollary that the Court fee payable on disputes that go before the Commercial Courts would be as provided as the respective State enactments or High Court Fee Rules wherever the High Courts have ordinary original Civil jurisdiction. The Commercial Court is nothing but an ordinary Civil Court constituted under the Act and therefore it will fall within the definition of Court under Sec.3(2) of AP Court Fee and Suit Valuation Act, 1956. Hence Ad-volerm fees is payable under Schedule – I and not fixed Court fee under Schedule – II thereof. Refer the edition in the case of M/s.Soma Hyderabad City centre

private limited vs. Telangana State Road Transport Corporation reported in (2019) 3 ALD 362 (TS) (DB).

4[Chapter IIIA

12A. Pre-Institution Mediation and Settlement-

(1) A suit, which does not contemplate any urgent interim relief under this Act, shall not be instituted unless the plaintiff exhausts the remedy of pre-institution mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.

COMMENTS

Pre-Institution Mediation and Settlement.

This chapter is inserted by the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Act, 2018 (Act No.28 of 2018) with retrospective effect from 03/05/2018. The main purpose and objective of the amendment is to provide a separate and unique mechanism of pre-institution mediation for settlement of commercial dispute. A new concept and a mechanism are introduced through this chapter, which ushers a ray of hope in the dynamics of civil litigations & for vibrant commerce activity in India. When a dispute arises in any relationship as defined in Section 2 of the Act, litigants have options now, one being a compulsory and the other being an alternative and emergent option.

Once a dispute emerges, disputant under this Act, may file a commercial suit before the Commercial Court, if the subject matter of specified value is not less than Rupees three lakhs, by directly seeking for a relief against the opposite party, without exhausting the remedy of Pre-Institution Mediation in accordance with this chapter, for an urgent interim relief, and not otherwise.

The disputant shall compulsorily explore the mechanism of Pre-Institution Mediation, for settlement of the dispute in accordance with procedures contemplated in this chapter and The Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018. Thus, there is a bar on the commercial disputant from directly approaching Courts for necessary relief and stipulates a mandatory mechanism for exploring a settlement of dispute, by Pre-Institution mediation Process. The mechanism is called Pre-Institution since it provides a platform for the disputant to exhaust a possible settlement by adopting the process of mediation, before approaching the institution, namely the Commercial Court.

Important to note that this concept of Pre-Institution is available only to such disputes which are commercial disputes as envisaged under Section 2 of this Act where the specified value of the subject matter of the dispute is not less than Rupees three lakhs.

(2) The Central Government may, by notification, authorise the Authorities constituted under the Legal Services Authorities Act, 1987 (39 of 1987), for the purposes of pre-institution mediation.

(3) Notwithstanding anything contained in the Legal Services Authorities Act, 1987 (39 of 1987), the Authority authorised by the Central Government under sub-section (2) shall complete the process of mediation within a period of three months from the date of application made by the plaintiff under sub-section (1): Provided that the period of mediation may be extended for a further period of two months with the consent of the parties: Provided further that, the period during which the parties remained occupied with the pre-institution mediation, such period shall not be computed for the purpose of limitation under the Limitation Act, 1963 (36 of 1963).

(4) If the parties to the commercial dispute arrive at a settlement, the same shall be reduced into writing and shall be signed by the parties to the dispute and the mediator.

(5) The settlement arrived at under this section shall have the same status and effect as if it is an arbitral award on agreed terms under sub-section (4) of section 30 of the Arbitration and Conciliation Act, 1996 (26 of 1996).]

1. Ins. by Act 28 of 2018, s. 10 (w.e.f. 3-5-2018).

2. The word "and" omitted by s. 10, *ibid.*, (w.e.f. 3-5-2018).

3. Clause (e) omitted by s. 10, *ibid.*, (w.e.f. 3-5-2018).

4. Ins. by s. 11, *ibid.* (w.e.f. 3-5-2018).

COMMENTS

Pre-Institution Mediation mechanism contemplated in this chapter is governed by The Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018. The rules *inter alia* provide that the process shall be completed within a period of 3 months from the date of application made by the party approaching the Authority, which is extendable for a further period of 2 months only, with the consent of the parties. Such period during which the parties remained occupied with the Pre-Institution Mediation shall not be computed for the purpose of limitation under the Limitation Act.

Section and the proviso imply that the period of limitation for filing the suit under this Act gets extended by such period of days, the party was occupied in Pre-Institution Mediation.

Examples

1. The cause of action to file the Commercial suit will end by 29/02/2020; the applicant approaches the Commercial Court Pre-Institution Mediation on 23rd January, 2020, by filing Form 1 before the District Legal Services Authority; the District Legal Services Authority, hereinafter referred to as DLSA, receives the application and issues notice to the opposite party to appear before it. The mediation process before the DLSA results in a failure report for some reasons

and the mediation process cannot continue and the DLSA endorses the applicant accordingly by issuing a certificate in the form on 21/03/2020 shall only be treated as the period occupied by the applicant for the purpose of limitation.

If the applicant files a commercial suit, on 29/03/2020, such period occupied in Pre-Institution mediation shall not be computed for the purpose of limitation.

2. The title to a residential immovable property is disputed. Cause of action to file the suit will end by 28/02/2020; the applicant approaches the Commercial Court Pre-Institution Mediation on 23rd January, 2020, by filing Form 1 before the District Legal Services Authority; the Legal Services Authority, hereinafter referred to as LSA, receives the application and issues notice to the opposite party to appear before it. The mediation process before the LSA results in a failure report for some reasons and the mediation process cannot continue and the LSA endorses the applicant accordingly by issuing a certificate in the form on 21/03/2020. The period from 23/01/2020 to 21/03/2020 is the period occupied by the applicant for the purpose of limitation before Pre Institution Mediation.

The applicant being unsuccessful in Pre institution mediation approaches the Commercial Court, by filing a suit for declaration, possession and injunction against the

defendant in respect of his residential property, on 29/03/2020, after a delay of 28 days. The applicant/plaintiff takes shelter under proviso to clause (3) of Section 12-A and seeks for condonation of delay in filing the commercial suit. It will not save the delay because the relief sought pertains to a dispute not falling within the definition of commercial dispute under Section 2 of the Commercial Courts Act, 2015. Sub clause (1) of Sec. 12-A starts with a rider, that a suit which does not contemplate any urgent relief under this Act, that is to say, the benefit of limitation under sub clause (3) of Sec. 12 of the Act would be available to only such dispute which is a Commercial dispute under Sec. 2 of the Act.

Chapter IV

Appeals

13. Appeals from decrees of Commercial Courts and Commercial Divisions.-

(1) 1[Any person aggrieved by the judgment or order of a Commercial Court below the level of a District Judge may appeal to the Commercial Appellate Court within a period of sixty days from the date of judgment or order.

(1A) Any person aggrieved by the judgment or order of a Commercial Court at the level of District Judge exercising original civil jurisdiction or, as the case may be, Commercial Division of a

High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of the judgment or order: Provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 (5 of 1908) as amended by this Act and section 37 of the Arbitration and Conciliation Act, 1996 (26 of 1996).]

(2) Notwithstanding anything contained in any other law for the time being in force or Letters Patent of a High Court, no appeal shall lie from any order or decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of this Act.

14. Expeditious disposal of appeals.-

The 2[Commercial Appellate Court and the Commercial Appellate Division] shall endeavour to dispose of appeals filed before it within a period of six months from the date of filing of such appeal.

Chapter V

Transfer of Pending Suits

15. Transfer of pending cases.-

(1) All suits and applications, including applications under the Arbitration and Conciliation Act, 1996 (26 of 1996), relating to a

commercial dispute of a Specified Value pending in a High Court where a Commercial Division has been constituted, shall be transferred to the Commercial Division.

COMMENTS

It is a transitional provision for the suits and applications which are pending as on the date of constitution of the Commercial Court and Commercial Division Courts.

Section 15(1) relates to all suits and applications including under the provisions of Arbitration and Conciliation Act, 1996, such cases relating to a commercial dispute of a specified value and pending in the High Court, shall be transferred to the Commercial Division of the High Court.

(2) All suits and applications, including applications under the Arbitration and Conciliation Act, 1996 (26 of 1996), relating to a commercial dispute of a Specified Value pending in any civil court in any district or area in respect of which a Commercial Court has been constituted, shall be transferred to such Commercial Court:

Provided that no suit or application where the final judgment has been reserved by the Court prior to the constitution of the Commercial Division or the Commercial Court shall be transferred either under sub-section (1) or sub-section (2).

COMMENTS

Section 15(2) relates to all suits and applications including the proceedings under the provisions of Arbitration and Conciliation Act, 1996 relating to a commercial dispute of a specified value, pending in Civil Court shall stand transferred to the Commercial Court.

However, suits or applications which were reserved for final judgment, shall not be transferred to Commercial Court.

(3) Where any suit or application, including an application under the Arbitration and Conciliation Act, 1996 (26 of 1996), relating to a commercial dispute of Specified Value shall stand transferred to the Commercial Division or Commercial Court under sub-section (1) or sub-section (2), the provisions of this Act shall apply to those procedures that were not complete at the time of transfer.

COMMENTS

Section 15(3) stipulates that all such suits and applications once transferred shall be dealt with as provided under Section 16(2), where the code of Civil Procedure as amended by the Act will be applicable for trial of the suit.

(4) The Commercial Division or Commercial Court, as the case may be, may hold case management hearings in respect of such transferred suit or application in order to prescribe new timelines or issue such further directions as may be necessary for a speedy and

efficacious disposal of such suit or application in accordance 3[with Order XV-A] of the Code of Civil Procedure, 1908 (5 of 1908): Provided that the proviso to sub-rule (1) of Rule 1 of Order V of the Code of Civil Procedure, 1908 (5 of 1908) shall not apply to such transferred suit or application and the court may, in its discretion, prescribe a new time period within which the written statement shall be filed.

COMMENTS

Section 15(4) – By Act No.28 of 2018, Order XV-A is substituted in place of XIV-A. It is to empower the Commercial Court & Commercial Court & Commercial Division of High Court to hold case management hearing in respect of such transferred suit, as provided under order XV-A CPC which is inserted by Act No.28 of 2018 in so far as this Act is concerned.

Order XV-A, as amended deals with case management hearing, which is separately discussed. Thus, for suits or application, case management hearing is mandatory. Order XIV-A CPC referred under Act No.4 of 2016 appears to be a typographical error, which has been substituted by Act No.28 of 2018 rightly as Order XV-A.

Amended provisions of Order V Rule 1, applicable to Commercial Courts are however not applicable to such cases which are transferred from other Courts. There the time limit for the filing of the written statement and the forfeiture of the right does not

apply to such cases. The Court may prescribe in its discretion a new time limit for filing the written statement.

(5) In the event that such suit or application is not transferred in the manner specified in sub-section (1), sub-section (2) or sub-section (3), the Commercial Appellate Division of the High Court may, on the application of any of the parties to the suit, withdraw such suit or application from the court before which it is pending and transfer the same for trial or disposal to the Commercial Division or Commercial Court, as the case may be, having territorial jurisdiction over such suit, and such order of transfer shall be final and binding.

COMMENTS

Section 15(5) envisages that on an application of any party to the suit, Commercial Appellate Division of the High Court to withdraw such suit or application from the court where it is pending and transfer the same for trial or disposal to the Commercial Division or Commercial Court, as the case may be having territorial jurisdiction and such order of transfer shall be final & binding. This is applicable only where the transfer has not taken place under the above in the automatic or *suo moto* process. It only provides for an window to the suits which are not transferred under the earlier provisions; it puts the onus on the parties to make an application to the Commercial Appellate Court, for transfer of a case to a commercial Court.

Provisions of Section 12(3) also has to be born in mind, where it envisages that no appeal or revision shall lie against an order on a finding of a Commercial Court regarding its jurisdiction to hear a Commercial Dispute.

This transitional provision is applicable to only the suits and applications which are pending as on the date of the enactment and is not applicable to pending appeals.

The case in which there is no pleading at all that the property in a question is exclusively being used for the commercial purpose and there is also no assertion that it is likely to be used for the exclusive commercial purpose. Valuation of the property is not a sole yardstick to transfer the proceedings to the Commercial Court. **Held**, simply because a transaction of immovable property is questioned the same ipso facto would not constitute commercial dispute and as such the conclusion which has been arrived at by the court below is found to be perverse, contrary to the provisions of law itself. **(M/s. Uday Autolink Pvt. Ltd. vs. Govindji Becharji Thakor (Dead) by LR's AIR 2019 Guj 130).**

Chapter VI

16. Amendments to the Code of Civil Procedure, 1908 in its application to commercial disputes.-

(1) The provisions of the Code of Civil Procedure, 1908 (5 of 1908) shall, in their application to any suit in respect of a commercial

dispute of a Specified Value, stand amended in the manner as specified in the Schedule.

(2) The Commercial Division and Commercial Court shall follow the provisions of the Code of Civil Procedure, 1908 (5 of 1908), as amended by this Act, in the trial of a suit in respect of a commercial dispute of a Specified Value.

(3) Where any provision of any Rule of the jurisdictional High Court or any amendment to the Code of Civil Procedure, 1908 (5 of 1908), by the State Government is in conflict with the provisions of the Code of Civil Procedure, 1908, as amended by this Act, the provisions of the Code of Civil Procedure as amended by this Act shall prevail.

Comments:

On a conjoint reading, it is clear that, wherever amendments have been specified in the said Act to the Code of Civil Procedure, 1908, the shall be prevail. In other respects, the CPC shall be followed by the Commercial Court and the commercial Division of the HIGH Court. If there is any conflict with the provisions of the said Act with any provisions contained in any other law for the time being in force, the provisions of the amended (schedule to the Act), namely CPC would prevail and have overriding effect.

The Hon'ble Supreme Court has held in **Desh Raj Vs Balkishan(D) through LRs Ms Rohin, 2020 SCC online 49** and **M/s SCG contracts India Pvt Ltd Vs K S Chamankar**

Infrastructure Pvt. Ltd. AIR 2019 SC 269, that there are two regimes of Civil Procedure, Commercial disputes are governed by CPC as amended by Sec. 16 of the Act. All other non-commercial disputes fall within the ambit of unamended provisions of CPC.

Chapter VII

Miscellaneous

17. Collection and disclosure of data by 1[Commercial Courts, Commercial Appellate Courts], Commercial Divisions and Commercial Appellate Divisions.-

The statistical data regarding the number of suits, applications, appeals or writ petitions filed before the 1[Commercial Courts, Commercial Appellate Courts], Commercial Division, or Commercial Appellate Division, as the case may be, the pendency of such cases, the status of each case, and the number of cases disposed of, shall be maintained and updated every month by each 1[Commercial Courts, Commercial Appellate Courts], Commercial Division, Commercial Appellate Division and shall be published on the website of the relevant High Court.

18. Power of High Court to issue directions.-

The High Court may, by notification, issue practice directions to supplement the provisions of Chapter II of this Act or the Code of Civil Procedure, 1908 (5 of 1908) insofar as such provisions apply to the hearing of commercial disputes of a Specified Value.

19. Infrastructure facilities.-

The State Government shall provide necessary infrastructure to facilitate the working of a Commercial Court or a Commercial Division of a High Court.

20. Training and continuous education.-

The State Government may, in consultation with the High Court, establish necessary facilities providing for training of Judges who may be appointed to the 2[Commercial Courts, Commercial Appellate Courts], Commercial Division or the Commercial Appellate Division in a High Court.

21. Act to have overriding effect.-

Save as otherwise provided, the provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law for the time being in force other than this Act.

1. Subs. by Act 28 of 2018, s. 15, for "Commercial Courts" and "Commercial Court" (w.e.f. 3-5-2018).

2. Subs. by s. 16, *ibid.*, for "Commercial Court" (w.e.f. 3-5-2018).

1[21A. Power of Central Government to make rules.-

(1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for or any of the following matters, namely:-

(a) The manner and procedure of pre-institution mediation under sub-section (1) of section 12A;

(b) Any other matter which is required to be, or may be, prescribed or in respect of which provision is to be made by rules made by the Central Government.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session, or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

22. Power to remove difficulties.-

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions

of this Act as may appear to it to be necessary or expedient for removing the difficulty: Provided that no such order shall be made under this section after the expiry of a period of two years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament.

23. Repeal and savings.-

(1) The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Ordinance, 2015 (Ord. 8 of 2015) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of this Act.

1. Ins. by Act 28 of 2018, s. 17 (w.e.f. 3-5-2018).

The Schedule

(See section 16)

1. Amendment of section 26.-

In section 26 of the Code of Civil Procedure, 1908 (5 of 1908) (hereafter referred to as the Code), in sub-section (2), the following proviso shall be inserted, namely:- "Provided that such an affidavit shall be in the form and manner as prescribed under Order VI of Rule 15A."

2. Substitution of new section for section 35.-

For section 35 of the Code, the following section shall be substituted, namely:-'

35. Costs.-

(1) In relation to any commercial dispute, the Court, notwithstanding anything contained in any other law for the time being in force or Rule, has the discretion to determine:

- (a) whether costs are payable by one party to another;
- (b) the quantum of those costs; and
- (c) when they are to be paid. Explanation.-For the purpose of clause

- (a) the expression "costs" shall mean reasonable costs relating to-
 - (i) the fees and expenses of the witnesses incurred;
 - (ii) legal fees and expenses incurred;
 - (iii) any other expenses incurred in connection with the proceedings.

(2) If the Court decides to make an order for payment of costs, the general rule is that the unsuccessful party shall be ordered to pay the costs of the successful party: Provided that the Court may make an order deviating from the general rule for reasons to be recorded in writing.

Illustration:

The Plaintiff, in his suit, seeks a money decree for breach of contract, and damages. The Court holds that the Plaintiff is entitled to the money decree. However, it returns a finding that the claim for damages is frivolous and vexatious. In such circumstances the Court may impose costs on the Plaintiff, despite the Plaintiff being the successful party, for having raised frivolous claims for damages.

(3) In making an order for the payment of costs, the Court shall have regard to the following circumstances, including-

- (a) the conduct of the parties;
- (b) whether a party has succeeded on part of its case, even if that party has not been wholly successful;
- (c) whether the party had made a frivolous counterclaim leading to delay in the disposal of the case;
- (d) whether any reasonable offer to settle is made by a party and unreasonably refused by the other party; and
- (e) whether the party had made a frivolous claim and instituted a vexatious proceeding wasting the time of the Court.

(4) The orders which the Court may make under this provision include an order that a party must pay-

- (a) a proportion of another party's costs;
- (b) a stated amount in respect of another party's costs;
- (c) costs from or until a certain date;
- (d) costs incurred before proceedings have begun;

- (e) costs relating to particular steps taken in the proceedings;
- (f) costs relating to a distinct part of the proceedings; and
- (g) interest on costs from or until a certain date.'

3. Amendment of section 35A.-

In Section 35-A of the Code, sub-section (2) shall be *omitted*.

4. Amendment of first Schedule.-

In the First Schedule to the Code,-

- (A) in the Order V, in Rule 1, in sub-rule (1), for the second proviso, the following proviso shall be substituted, namely:-

"Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record."

- (B) in Order VI,-

- (i) after Rule 3, the following Rule shall be inserted, namely:-

"3-A. Forms of pleading in Commercial Courts.-In a commercial dispute, where forms of pleadings have been prescribed under the High Court Rules or Practice Directions made for the purposes of such commercial disputes, pleadings shall be in such forms.";

(ii) after Rule 15, the following Rule shall be inserted, namely:-

"15-A. Verification of pleadings in a commercial dispute.-

(1) Notwithstanding anything contained in Rule 15, every pleading in a commercial dispute shall be verified by an affidavit in the manner and form prescribed in the Appendix to this Schedule.

(2) An affidavit under sub-rule (1) above shall be signed by the party or by one of the parties to the proceedings, or by any other person on behalf of such party or parties who is proved to the satisfaction of the Court to be acquainted with the facts of the case and who is duly authorised by such party or parties.

(3) Where a pleading is amended, the amendments must be verified in the form and manner referred to in sub-rule (1) unless the Court orders otherwise.

(4) Where a pleading is not verified in the manner provided under sub-rule (1), the party shall not be permitted to rely on such pleading as evidence or any of the matters set out therein.

(5) The Court may strike out a pleading which is not verified by a Statement of Truth, namely, the affidavit set out in the Appendix to this Schedule.";

(C) in Order VII, after Rule 2, the following Rule shall be inserted, namely:-

"2A. Where interest is sought in the suit.-

(1) Where the plaintiff seeks interest, the plaint shall contain a statement to that effect along with the details set out under sub-rules (2) and (3).

(2) Where the plaintiff seeks interest, the plaint shall state whether the plaintiff is seeking interest in relation to a commercial transaction within the meaning of section 34 of the Code of Civil Procedure, 1908 (5 of 1908) and, furthermore, if the plaintiff is doing so under the terms of a contract or under an Act, in which case the Act is to be specified in the plaint; or on some other basis and shall state the basis of that.

(3) Pleadings shall also state-

(a) the rate at which interest is claimed;

(b) the date from which it is claimed;

(c) the date to which it is calculated;

(d) the total amount of interest claimed to the date of calculation;
and

(e) the daily rate at which interest accrues after that date."

(D) in Order VIII,-

(i) in Rule 1, for the proviso, the following proviso shall be substituted, namely:-

"Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record."

(ii) after Rule 3, the following Rule shall be inserted, namely:-

"3A. Denial by the defendant in suits before the Commercial Division of the High Court or the Commercial Court.-

(1) Denial shall be in the manner provided in sub-rules (2), (3), (4) and (5) of this Rule.

(2) The defendant in his written statement shall state which of the allegations in the particulars of plaint he denies, which allegations

he is unable to admit or deny, but which he requires the plaintiff to prove, and which allegations he admits.

(3) Where the defendant denies an allegation of fact in a plaint, he must state his reasons for doing so and if he intends to put forward a different version of events from that given by the plaintiff, he must state his own version.

(4) If the defendant disputes the jurisdiction of the Court he must state the reasons for doing so, and if he is able, give his own statement as to which Court ought to have jurisdiction.

(5) If the defendant disputes the plaintiff's valuation of the suit, he must state his reasons for doing so, and if he is able, give his own statement of the value of the suit.";

(iii) in Rule 5, in sub-rule (1), after the first proviso, the following proviso shall be inserted, namely:-

"Provided further that every allegation of fact in the plaint, if not denied in the manner provided under Rule 3A of this Order, shall be taken to be admitted except as against a person under disability.";

(iv) in Rule 10, the following proviso shall be inserted, namely:-

"1[Provided that] no Court shall make an order to extend the time provided under Rule 1 of this Order for filing of the written statement."

(E) for Order XI of the Code, the following Order shall be substituted, namely:-

1. The words "after the first proviso" omitted by Act 28 of 2018, s. 18 (w.e.f. 3-5-2018).

"Order XI

Disclosure, Discovery and Inspection of Documents in Suits Before The Commercial Division of a High Court or a Commercial Court

1. Disclosure and discovery of documents.-

(1) Plaintiff shall file a list of all documents and photocopies of all documents, in its power, possession, control or custody, pertaining to the suit, along with the plaint, including:-

(a) documents referred to and relied on by the plaintiff in the plaint;

(b) documents relating to any matter in question in the proceedings, in the power, possession, control or custody of the plaintiff, as on the date of filing the plaint, irrespective of whether the same is in support of or adverse to the plaintiff's case;

(c) nothing in this Rule shall apply to documents produced by plaintiffs and relevant only-

(i) for the cross-examination of the defendant's witnesses, or

(ii) in answer to any case set up by the defendant subsequent to the filing of the plaint, or

(iii) handed over to a witness merely to refresh his memory.

(2) The list of documents filed with the plaint shall specify whether the documents in the power, possession, control or custody of the plaintiff are originals, office copies or photocopies and the list shall also set out in brief, details of parties to each document, mode of execution, issuance or receipt and line of custody of each document.

(3) The plaint shall contain a declaration on oath from the plaintiff that all documents in the power, possession, control or custody of the plaintiff, pertaining to the facts and circumstances of the proceedings initiated by him have been disclosed and copies thereof annexed with the plaint, and that the plaintiff does not have any other documents in its power, possession, control or custody.

Explanation.-A declaration on oath under this sub-rule shall be contained in the Statement of Truth as set out in the Appendix.

(4) In case of urgent filings, the plaintiff may seek leave to rely on additional documents, as part of the above declaration on oath and subject to grant of such leave by Court, the plaintiff shall file such additional documents in Court, within thirty days of filing the suit, along with a declaration on oath that the plaintiff has produced all documents in its power, possession, control or custody, pertaining to the facts and circumstances of the proceedings initiated by the plaintiff and that the plaintiff does not have any other documents, in its power, possession, control or custody.

(5) The plaintiff shall not be allowed to rely on documents, which were in the plaintiff's power, possession, control or custody and not disclosed along with the complaint or within the extended period set out above, save and except by leave of Court and such leave shall be granted only upon the plaintiff establishing reasonable cause for non-disclosure along with the complaint.

(6) The complaint shall set out details of documents, which the plaintiff believes to be in the power, possession, control or custody of the defendant and which the plaintiff wishes to rely upon and seek leave for production thereof by the said defendant.

(7) The defendant shall file a list of all documents and photocopies of all documents, in its power, possession, control or custody, pertaining to the suit, along with the written statement or with its counterclaim if any, including-

(a) the documents referred to and relied on by the defendant in the written statement;

(b) the documents relating to any matter in question in the proceeding in the power, possession, control or custody of the defendant, irrespective of whether the same is in support of or adverse to the defendant's defence;

(c) nothing in this Rule shall apply to documents produced by the defendants and relevant only-

(i) for the cross-examination of the plaintiff's witnesses,

(ii) in answer to any case set up by the plaintiff subsequent to the filing of the complaint, or

(iii) handed over to a witness merely to refresh his memory.

(8) The list of documents filed with the written statement or counterclaim shall specify whether the documents, in the power, possession, control or custody of the defendant, are originals, office copies or photocopies and the list shall also set out in brief, details of parties to each document being produced by the defendant, mode of execution, issuance or receipt and line of custody of each document.

(9) The written statement or counterclaim shall contain a declaration on oath made by the deponent that all documents in the power, possession, control or custody of the defendant, save and except for those set out in sub-rule (7) (c)

(iii) pertaining to the facts and circumstances of the proceedings initiated by the plaintiff or in the counterclaim, have been disclosed and copies thereof annexed with the written statement or counterclaim and that the defendant does not have in its power, possession, control or custody, any other documents.

(10) Save and except for sub-rule (7) (c)

(iii) defendant shall not be allowed to rely on documents, which were in the defendant's power, possession, control or custody and not disclosed along with the written statement or counterclaim, save and except by leave of Court and such leave shall be granted only upon the defendant establishing reasonable cause for non-disclosure along with the written statement or counterclaim.

(11) The written statement or counterclaim shall set out details of documents in the power, possession, control or custody of the plaintiff, which the defendant wishes to rely upon and which have not been disclosed with the plaint, and call upon the plaintiff to produce the same.

(12) Duty to disclose documents, which have come to the notice of a party, shall continue till disposal of the suit.

1. Subs. by Act 28 of 2018, s. 18, for "Provided further that" (w.e.f. 3-5-2018).

2. Discovery by interrogatories.-

(1) In any suit the plaintiff or defendant by leave of the court may deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties, and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such persons is required to answer: Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose: Provided further that interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.

(2) On an application for leave to deliver interrogatories, the particular interrogatories proposed to be delivered shall be submitted to the court, and that court shall decide within seven

days from the day of filing of the said application, in deciding upon such application, the court shall take into account any offer, which may be made by the party sought to be interrogated to deliver particulars, or to make admissions, or to produce documents relating to the matters in question, or any of them, and leave shall be given as to such only of the interrogatories submitted as the court shall consider necessary either for disposing fairly of the suit or for saving costs.

(3) In adjusting the costs of the suit inquiry shall at the instance of any party be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing officer or of the court, either with or without an application for inquiry, that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be paid in any event by the party in fault.

(4) Interrogatories shall be in the form provided in Form No. 2 in Appendix C to the Code of Civil Procedure, 1908 (5 of 1908), with such variations as circumstances may require.

(5) Where any party to a suit is a corporation or a body of persons, whether incorporated or not, empowered by law to sue or be sued, whether in its own name or in the name of any officer of other person, any opposite party may apply for an order allowing

him to deliver interrogatories to any member or officer of such corporation or body, and an order may be made accordingly.

(6) Any objection to answering any interrogatory on the ground that it is scandalous or irrelevant or not exhibited bona fide for the purpose of the suit, or that the matters inquired into are not sufficiently material at that stage, or on the ground of privilege or any other ground may be taken in the affidavit in answer.

(7) Any interrogatories may be set aside on the ground that they have been exhibited unreasonably or vexatiously, or struck out on the ground that they are prolix, oppressive, unnecessary or scandalous and any application for this purpose may be made within seven days after service of the interrogatories.

(8) Interrogatories shall be answered by affidavit to be filed within ten days, or within such other time as the court may allow.

(9) An affidavit in answer to interrogatories shall be in the form provided in Form No. 3 in Appendix C to the Code of Civil Procedure, 1908 (5 of 1908), with such variations as circumstances may require.

(10) No exceptions shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the court.

(11) Where any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the court for an

order requiring him to answer, or to answer further, as the case may be, and an order may be made requiring him to answer, or to answer further, either affidavit or by viva voce examination, as the court may direct.

3. Inspection.-

(1) All parties shall complete inspection of all documents disclosed within thirty days of the date of filing of the written statement or written statement to the counterclaim, whichever is later. The Court may extend this time limit upon application at its discretion, but not beyond thirty days in any event.

(2) Any party to the proceedings may seek directions from the Court, at any stage of the proceedings, for inspection or production of documents by the other party, of which inspection has been refused by such party or documents have not been produced despite issuance of a notice to produce.

(3) Order in such application shall be disposed of within thirty days of filing such application, including filing replies and rejoinders (if permitted by Court) and hearing.

(4) If the above application is allowed, inspection and copies thereof shall be furnished to the party seeking it, within five days of such order.

(5) No party shall be permitted to rely on a document, which it had failed to disclose or of which inspection has not been given, save and except with leave of Court.

(6) The Court may impose exemplary costs against a defaulting party, who wilfully or negligently failed to disclose all documents pertaining to a suit or essential for a decision therein and which are in their power, possession, control or custody or where a Court holds that inspection or copies of any documents had been wrongfully or unreasonably withheld or refused.

4. Admission and denial of documents.-

(1) Each party shall submit a statement of admissions or denials of all documents disclosed and of which inspection has been completed, within fifteen days of the completion of inspection or any later date as fixed by the Court.

(2) The statement of admissions and denials shall set out explicitly, whether such party was admitting or denying:-

- (a) correctness of contents of a document;
- (b) existence of a document;
- (c) execution of a document;
- (d) issuance or receipt of a document;
- (e) custody of a document.

Explanation.-A statement of admission or denial of the existence of a document made in accordance with sub-rule (2) (b) shall include the admission or denial of the contents of a document.

(3) Each party shall set out reasons for denying a document under any of the above grounds and bare and unsupported denials shall not be deemed to be denials of a document and proof of such documents may then be dispensed with at the discretion of the Court.

(4) Any party may however submit bare denials for third party documents of which the party denying does not have any personal knowledge of, and to which the party denying is not a party to in any manner whatsoever.

(5) An Affidavit in support of the statement of admissions and denials shall be filed confirming the correctness of the contents of the statement.

(6) In the event that the Court holds that any party has unduly refused to admit a document under any of the above criteria,-costs (including exemplary costs) for deciding on admissibility of a document may be imposed by the Court on such party.

(7) The Court may pass orders with respect to admitted documents including for waiver of further proof thereon or rejection of any documents.

5. Production of documents.-

(1) Any party to a proceeding may seek or the Court may order, at any time during the pendency of any suit, production by any party or person, of such documents in the possession or power of such party or person, relating to any matter in question in such suit.

(2) Notice to produce such document shall be issued in the Form provided in Form No. 7 in Appendix C to the Code of Civil Procedure, 1908 (5 of 1908).

(3) Any party or person to whom such notice to produce is issued shall be given not less than seven days and not more than fifteen days to produce such document or to answer to their inability to produce such document.

(4) The Court may draw an adverse inference against a party refusing to produce such document after issuance of a notice to produce and where sufficient reasons for such non-production are not given and order costs.

6. Electronic records.-

(1) In case of disclosures and inspection of Electronic Records (as defined in the Information Technology Act, 2000 (21 of 2000)), furnishing of printouts shall be sufficient compliance of the above provisions.

(2) At the discretion of the parties or where required (when parties wish to rely on audio or video content), copies of electronic records may be furnished in electronic form either in addition to or in lieu of printouts.

(3) Where Electronic Records form part of documents disclosed, the declaration on oath to be filed by a party shall specify-

- (a) the parties to such Electronic Record;
- (b) the manner in which such electronic record was produced and by whom;
- (c) the dates and time of preparation or storage or issuance or receipt of each such electronic record;
- (d) the source of such electronic record and date and time when the electronic record was printed;
- (e) in case of email ids, details of ownership, custody and access to such email ids;
- (f) in case of documents stored on a computer or computer resource (including on external servers or cloud), details of ownership, custody and access to such data on the computer or computer resource;
- (g) deponent's knowledge of contents and correctness of contents;
- (h) whether the computer or computer resource used for preparing or receiving or storing such document or data was functioning properly or in case of malfunction that such malfunction did not affect the contents of the document stored;
- (i) that the printout or copy furnished was taken from the original computer or computer resource.

(4) The parties relying on printouts or copy in electronic form, of any electronic records, shall not be required to give inspection of electronic records, provided a declaration is made by such party that each such copy, which has been produced, has been made from the original electronic record.

(5) The Court may give directions for admissibility of Electronic Records at any stage of the proceedings.

(6) Any party may seek directions from the Court and the Court may of its motion issue directions for submission of further proof of any electronic record including metadata or logs before admission of such electronic record.

7. Certain provisions of the Code of Civil Procedure, 1908 not to apply.-

For avoidance of doubt, it is hereby clarified that Order XIII Rule 1, Order VII Rule 14 and Order VIII Rule 1A of the Code of Civil Procedure, 1908 (5 of 1908) shall not apply to suits or applications before the Commercial Divisions of High Court or Commercial Courts."

5. Insertion of new Order XIII-A.-

After Order XIII of the Code, the following Order shall be inserted, namely:-

'Order XIII-A**Summary Judgment****1. Scope of and classes of suits to which this Order applies.-**

(1) This Order sets out the procedure by which Courts may decide a claim pertaining to any Commercial Dispute without recording oral evidence.

(2) For the purposes of this Order, the word "claim" shall include-

(a) part of a claim;

(b) any particular question on which the claim (whether in whole or in part) depends; or

(c) a counterclaim, as the case may be.

(3) Notwithstanding anything to the contrary, an application for summary judgment under this Order shall not be made in a suit in respect of any Commercial Dispute that is originally filed as a summary suit under Order XXXVII.

2. Stage for application for summary judgment.-

An applicant may apply for summary judgment at any time after summons has been served on the defendant: Provided that, no application for summary judgment may be made by such applicant after the Court has framed the issues in respect of the suit.

3. Grounds for summary judgment.-

The Court may give a summary judgment against a plaintiff or defendant on a claim if it considers that-

- (a) the plaintiff has no real prospect of succeeding on the claim or the defendant has no real prospect of successfully defending the claim, as the case may be; and
- (b) there is no other compelling reason why the claim should not be disposed of before recording of oral evidence.

4. Procedure.-

(1) An application for summary judgment to a Court shall, in addition to any other matters the applicant may deem relevant, include the matters set forth in sub-clauses (a) to (f) mentioned hereunder:-

- (a) the application must contain a statement that it is an application for summary judgment made under this Order;
- (b) the application must precisely disclose all material facts and identify the point of law, if any;
- (c) in the event the applicant seeks to rely upon any documentary evidence, the applicant must,-
 - (i) include such documentary evidence in its application, and
 - (ii) identify the relevant content of such documentary evidence on which the applicant relies;
- (d) the application must state the reason why there are no real prospects of succeeding on the claim or defending the claim, as the case may be;

(e) the application must state what relief the applicant is seeking and briefly state the grounds for seeking such relief.

(2) Where a hearing for summary judgment is fixed, the respondent must be given at least thirty days' notice of:-

(a) the date fixed for the hearing; and

(b) the claim that is proposed to be decided by the Court at such hearing.

(3) The respondent may, within thirty days of the receipt of notice of application of summary judgment or notice of hearing (whichever is earlier), file a reply addressing the matters set forth in clauses (a) to (f) mentioned hereunder in addition to any other matters that the respondent may deem relevant:-

(a) the reply must precisely-

(i) disclose all material facts;

(ii) identify the point of law, if any; and

(iii) state the reasons why the relief sought by the applicant should not be granted;

(b) in the event the respondent seeks to rely upon any documentary evidence in its reply, the respondent must-

(i) include such documentary evidence in its reply; and

(ii) identify the relevant content of such documentary evidence on which the respondent relies;

(c) the reply must state the reason why there are real prospects of succeeding on the claim or defending the claim, as the case may be;

(d) the reply must concisely state the issues that should be framed for trial;

(e) the reply must identify what further evidence shall be brought on record at trial that could not be brought on record at the stage of summary judgment; and

(f) the reply must state why, in light of the evidence or material on record if any, the Court should not proceed to summary judgment.

5. Evidence for hearing of summary judgment.-

(1) Notwithstanding anything in this Order, if the respondent in an application for summary judgment wishes to rely on additional documentary evidence during the hearing, the respondent must:-

(a) file such documentary evidence; and

(b) serve copies of such documentary evidence on every other party to the application at least fifteen days prior to the date of the hearing.

(2) Notwithstanding anything in this Order, if the applicant for summary judgment wishes to rely on documentary evidence in reply to the defendant's documentary evidence, the applicant must:-

(a) file such documentary evidence in reply; and

(b) serve a copy of such documentary evidence on the respondent at least five days prior to the date of the hearing.

(3) Notwithstanding anything to the contrary, sub-rules (1) and (2) shall not require documentary evidence to be:-

(a) filed if such documentary evidence has already been filed; or

(b) served on a party on whom it has already been served.

6. Orders that may be made by Court.-

(1) On an application made under this Order, the Court may make such orders that it may deem fit in its discretion including the following:-

(a) judgment on the claim;

(b) conditional order in accordance with Rule 7 mentioned hereunder;

(c) dismissing the application;

(d) dismissing part of the claim and a judgment on part of the claim that is not dismissed;

(e) striking out the pleadings (whether in whole or in part); or

(f) further directions to proceed for case management under Order XV-A.

(2) Where the Court makes any of the orders as set forth in sub-rule (1) (a) to (f), the Court shall record its reasons for making such order.

7. Conditional order.-

(1) Where it appears to the Court that it is possible that a claim or defence may succeed but it is improbable that it shall do so, the Court may make a conditional order as set forth in Rule 6 (1) (b).

(2) Where the Court makes a conditional order, it may:-

(a) make it subject to all or any of the following conditions:-

- (i) require a party to deposit a sum of money in the Court;
 - (ii) require a party to take a specified step in relation to the claim or defence, as the case may be;
 - (iii) require a party, as the case may be, to give such security or provide such surety for restitution of costs as the Court deems fit and proper;
 - (iv) impose such other conditions, including providing security for restitution of losses that any party is likely to suffer during the pendency of the suit, as the Court may deem fit in its discretion; and
- (b) specify the consequences of the failure to comply with the conditional order, including passing a judgment against the party that have not complied with the conditional order.

8. Power to impose costs.-

The Court may make an order for payment of costs in an application for summary judgment in accordance with the provisions of sections 35 and 35A of the Code.'

6. Omission of Order XV.-

Order XV of the Code shall be omitted.

7. Insertion of Order XV-A.-

7. After Order XV of the Code, the following Order shall be inserted, namely:-

"Order XVA

Case Management Hearing

1. First Case Management Hearing.-

The Court shall hold the first Case Management Hearing, not later than four weeks from the date of filing of affidavit of admission or denial of documents by all parties to the suit.

2. Orders to be passed in a Case Management Hearing.-

In a Case Management Hearing, after hearing the parties, and once it finds that there are issues of fact and law which require to be tried, the Court may pass an order-

(a) framing the issues between the parties in accordance with Order XIV of the Code of Civil Procedure, 1908 (5 of 1908) after examining pleadings, documents and documents produced before it, and on examination conducted by the Court under Rule 2 of Order X, if required;

(b) listing witnesses to be examined by the parties;

(c) fixing the date by which affidavit of evidence to be filed by parties;

(d) fixing the date on which evidence of the witnesses of the parties to be recorded;

(e) fixing the date by which written arguments are to be filed before the Court by the parties;

(f) fixing the date on which oral arguments are to be heard by the Court; and

(g) setting time limits for parties and their advocates to address oral arguments.

3. Time limit for the completion of a trial.-

In fixing dates or setting time limits for the purposes of Rule 2 of this Order, the Court shall ensure that the arguments are closed not later than six months from the date of the first Case Management Hearing.

4. Recording of oral evidence on a day-to-day basis.-

The Court shall, as far as possible, ensure that the recording of evidence shall be carried on, on a day-to-day basis until the cross-examination of all the witnesses is complete.

5. Case Management Hearings during a trial.-

The Court may, if necessary, also hold Case Management Hearings anytime during the trial to issue appropriate orders so as to ensure adherence by the parties to the dates fixed under Rule 2 and facilitate speedy disposal of the suit.

6. Powers of the Court in a Case Management Hearing.-

(1) In any Case Management Hearing held under this Order, the Court shall have the power to-

(a) prior to the framing of issues, hear and decide any pending application filed by the parties under Order XIII-A;

- (b) direct parties to file compilations of documents or pleadings relevant and necessary for framing issues;
- (c) extend or shorten the time for compliance with any practice, direction or Court order if it finds sufficient reason to do so;
- (d) adjourn or bring forward a hearing if it finds sufficient reason to do so;
- (e) direct a party to attend the Court for the purposes of examination under Rule 2 of Order X;
- (f) consolidate proceedings;
- (g) strike off the name of any witness or evidence that it deems irrelevant to the issues framed;
- (h) direct a separate trial of any issue;
- (i) decide the order in which issues are to be tried;
- (j) exclude an issue from consideration;
- (k) dismiss or give judgment on a claim after a decision on a preliminary issue;
- (l) direct that evidence be recorded by a Commission where necessary in accordance with Order XXVI;
- (m) reject any affidavit of evidence filed by the parties for containing irrelevant, inadmissible or argumentative material;
- (n) strike off any parts of the affidavit of evidence filed by the parties containing irrelevant, inadmissible or argumentative material;
- (o) delegate the recording of evidence to such authority appointed by the Court for this purpose;
- (p) pass any order relating to the monitoring of recording the evidence by a commission or any other authority;

- (q) order any party to file and exchange a costs budget;
 - (r) issue directions or pass any order for the purpose of managing the case and furthering the overriding objective of ensuring the efficient disposal of the suit.
- (2) When the Court passes an order in exercise of its powers under this Order, it may-
- (a) make it subject to conditions, including a condition to pay a sum of money into Court; and
 - (b) specify the consequence of failure to comply with the order or a condition.
- (3) While fixing the date for a Case Management Hearing, the Court may direct that the parties also be present for such Case Management Hearing, if it is of the view that there is a possibility of settlement between the parties.

7. Adjournment of Case Management Hearing.-

- (1) The Court shall not adjourn the Case Management Hearing for the sole reason that the advocate appearing on behalf of a party is not present:

Provided that an adjournment of the hearing is sought in advance by moving an application, the Court may adjourn the hearing to another date upon the payment of such costs as the Court deems fit, by the party moving such application.

- (2) Notwithstanding anything contained in this Rule, if the Court is satisfied that there is a justified reason for the absence of the

advocate, it may adjourn the hearing to another date upon such terms and conditions it deems fit.

8. Consequences of non-compliance with orders.-

Where any party fails to comply with the order of the Court passed in a Case Management Hearing, the Court shall have the power to-

- (a) condone such non-compliance by payment of costs to the Court;
- (b) foreclose the non-compliant party's right to file affidavits, conduct cross-examination of witnesses, file written submissions, address oral arguments or make further arguments in the trial, as the case may be, or
- (c) dismiss the plaint or allow the suit where such non-compliance is wilful, repeated and the imposition of costs is not adequate to ensure compliance."

8. Amendment of Order XVIII.-

In Order XVIII of the Code, in Rule 2, for sub-rules (3A), (3B), (3C), (3D), (3E) and (3F), the following shall be substituted, namely:-

"(3A) A party shall, within four weeks prior to commencing the oral arguments, submit concisely and under distinct headings written arguments in support of his case to the Court and such written arguments shall form part of the record.

(3B) The written arguments shall clearly indicate the provisions of the laws being cited in support of the arguments and the citations

of judgments being relied upon by the party and include copies of such judgments being relied upon by the party.

(3C) A copy of such written arguments shall be furnished simultaneously to the opposite party.

(3D) The Court may, if it deems fit, after the conclusion of arguments, permit the parties to file revised written arguments within a period of not more than one week after the date of conclusion of arguments.

(3E) No adjournment shall be granted for the purpose of filing the written arguments unless the Court, for reasons to be recorded in writing, considers it necessary to grant such adjournment.

(3F) It shall be open for the Court to limit the time for oral submissions having regard to the nature and complexity of the matter."

9. Amendment of Order XVIII.-

In Order XVIII of the Code, in Rule 4, after sub-rule (1), the following sub-rules shall be inserted, namely:-

"(1A) The affidavits of evidence of all witnesses whose evidence is proposed to be led by a party shall be filed simultaneously by that party at the time directed in the first Case Management Hearing.

(1B) A party shall not lead additional evidence by the affidavit of any witness (including of a witness who has already filed an

affidavit) unless sufficient cause is made out in an application for that purpose and an order, giving reasons, permitting such additional affidavit is passed by the Court.

(1C) A party shall however have the right to withdraw any of the affidavits so filed at any time prior to commencement of cross-examination of that witness, without any adverse inference being drawn based on such withdrawal: Provided that any other party shall be entitled to tender as evidence and rely upon any admission made in such withdrawn affidavit."

10. Amendment to Order XIX.-

In Order XIX of the Code, after Rule 3, the following Rules shall be inserted, namely:-

"4. Court may control evidence.-

(1) The Court may, by directions, regulate the evidence as to issues on which it requires evidence and the manner in which such evidence may be placed before the Court.

(2) The Court may, in its discretion and for reasons to be recorded in writing, exclude evidence that would otherwise be produced by the parties.

5. Redacting or rejecting evidence.-

A Court may, in its discretion, for reasons to be recorded in writing-

- (i) redact or order the redaction of such portions of the affidavit of examination-in-chief as do not, in its view, constitute evidence; or
- (ii) return or reject an affidavit of examination-in-chief as not constituting admissible evidence.

6. Format and guidelines of affidavit of evidence.-

An affidavit must comply with the form and requirements set forth below:-

- (a) such affidavit should be confined to, and should follow the chronological sequence of, the dates and events that are relevant for proving any fact or any other matter dealt with;
- (b) where the Court is of the view that an affidavit is a mere reproduction of the pleadings, or contains the legal grounds of any party's case, the Court may, by order, strike out the affidavit or such parts of the affidavit, as it deems fit and proper;
- (c) each paragraph of an affidavit should, as far as possible, be confined to a distinct portion of the subject;
- (d) an affidavit shall state-
 - (i) which of the statements in it are made from the deponent's own knowledge and which are matters of information or belief; and
 - (ii) the source for any matters of information or belief;

- (e) an affidavit should-
- (i) have the pages numbered consecutively as a separate document (or as one of several documents contained in a file);
 - (ii) be divided into numbered paragraphs;
 - (iii) have all numbers, including dates, expressed in figures; and
 - (iv) if any of the documents referred to in the body of the affidavit are annexed to the affidavit or any other pleadings, give the annexures and page numbers of such documents that are relied upon."

11. Amendment of Order XX.-

In Order XX of the Code, for Rule 1, the following Rule shall be substituted, namely:-

"(1) The 1[Commercial Court, Commercial Appellate Court], Commercial Division, or Commercial Appellate Division, as the case may be, shall, within ninety days of the conclusion of arguments, pronounce judgment and copies thereof shall be issued to all the parties to the dispute through electronic mail or otherwise."

2[12.After Appendix H, the following Appendix shall be inserted, namely:-

"Appendix-I**Statement of Truth**

(Under First Schedule, Order VI- Rule 15A and Order XI- Rule 3)

I the deponent do hereby solemnly affirm and declare as under:

1. I am the party in the above suit and competent to swear this affidavit.
2. I am sufficiently conversant with the facts of the case and have also examined all relevant documents and records in relation thereto.
3. I say that the statements made in paragraphs are true to my knowledge and statements made in paragraphs are based on information received which I believe to be correct and statements made in paragraphs are based on legal advice.
4. I say that there is no false statement or concealment of any material fact, document or record and I have included information that is according to me, relevant for the present suit.
5. I say that all documents in my power, possession, control or custody, pertaining to the facts and circumstances of the proceedings initiated by me have been disclosed and copies thereof annexed with the plaint, and that I do not have any other documents in my power, possession, control or custody.

6. I say that the above-mentioned pleading comprises of a total of pages, each of which has been duly signed by me.

7. I state that the Annexures hereto are true copies of the documents referred to and relied upon by me.

8. I say that I am aware that for any false statement or concealment, I shall be liable for action taken against me under the law for the time being in force.

Place:

Date:

DEPONENT

VERIFICATION

I,...do hereby declare that the statements made above are true to my knowledge.

Verified at [place] on this [date]

COMMERCIAL COURTS

1. Verifying with an affidavit as provided under Order VI rule 15A of CPC and a Statement of Truth as provided in Appendix-I.

2. Pre Institution Mediation: Court to examine whether the suit is presented after exhausting the remedy of Pre-Institution Mediation under Chapter IIIA r/w Sec. 12-A of the Act or any application is filed seeking urgent interim relief.

[**13+2 months time for PIM** and time spent to be excluded for imputation purpose]

3. Time for filing Written statement: From the date of service of summons - **30+90 days**, but not later than 120 days

4. Replication/Rejoinder: From the date of W/st - **30 days**

5. Inspection/discovery/disclosure of documents: From the date of completion of pleadings 30 days

6. Statement of Admission and denial of documents: From the date of completion of inspection of documents 15 days

Acts to be performed with reference to documents		Whether Compulsory or Optional
1.	Disclosure and discovery of documents	Compulsory
2.	Discovery by interrogatories	Optional
3	Inspection	Compulsory
		1. The parties have to

		<p>complete inspection of documents within 30 days from the date of filing the written statement or the counter claim, as the case may be.</p> <p>2. A party may file an application for inspection or production of documents of which inspection has been refused by the opposite party or documents have not been produced despite issuance of notice to produce as contemplated under Rule 2 of Order XI CPC.</p> <p>3. If more time is required to inspect, a party can make application for extension of time assigning reasons. The Court shall call for reply and hear the application within 30 days.</p> <p>4. It may at its discretion extend the time, but not beyond 30 days maximum and it shall grant only 5 days time for to furnish such documents.</p> <p>5. If the party so ordered fails to do so or unreasonably withholds or refuses to provide such information/document, the</p>
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		Court may order him to cost.
4	<p>Admission and denial of documents</p> <ol style="list-style-type: none"> 1. correctness of contents of a document 2. Existence of a document 3. Execution of a documentary 4. Issuance of receipt of a document 5. Custody of a document 	<p>Compulsory</p> <p>Affidavit of Confirmation: Once the admission and denials are complete, the parties have to file affidavit in support of the same confirming the correctness of the contents of the statement therein</p> <p>The Court may pass orders with respect to admitted documents including waiver of further proof thereof or rejection of any document.</p> <p>Marking of admitted documents to be done at this stage</p>
5	Production of documents	On an application by a party requiring the other side to produce documents, not less than 7 days and not more than 15 days time to produce such documents or to explain the inability produce it
	Electronic records	Above is applicable even to electronic records

7. Examination of Parties: Simultaneously during the stage of admission and denial of documents or independently after that, the Court may examine pleadings, documents and also direct a party/parties to attend the hearing for the purpose of such examination [Order X rule 2 CPC]

8. Summary Judgment: Only if the lis can be decided on admitted and exhibited documents.

However, before framing of issues, the parties can make application for summary judgment on a claim, part claim or a counter claim at anytime after service of summons on the defendant.

On filing of such application, opponent to be given **30 days** notice.

If the opponent wishes to rely on documentary evidence, he can do so by serving copies on every other party to the application **at least 15 days prior** to the date of hearing.

Then the **applicant** to file such documentary evidence in reply and also serve a copy of the same on the opponent **at least 5 days prior to** the date of hearing

[NOTE: This procedure is not applicable to a commercial dispute originally filed as a summary suit under Order XXXVII CPC.]

**Distinction between Order XXXVII CPC
&
Order XII-A of the Commercial Courts Act**

Order XXXVII of the Code of Civil Procedure		Order XIII-A of Commercial Courts Act
1.	A summary suit is filed by the plaintiff	Any party to a commercial dispute can make an application for summary judgment.
2.	The judgment is sought in respect of the whole suit claim.	Judgment is sought in respect of a claim or part of a claim, counter claim.
3	Order XIII A CPC has no application to Summary suits.	Summary judgment is applicable only to commercial disputes
4	Plaintiff to satisfy that the defendant has no valid defense to contest the suit.	Applicant to satisfy that the opponent has no real prospect of succeeding and there is no other compelling reason as to why the claim should not be disposed of before recording of oral evidence.
5	Filing of written statement permissible only if the Court grants leave	Filing of written statement is independent of this proceeding and is usually completed before this stage.
6.	Evidence, if any, either oral or documentary, is only after conversion of suit as regular suit and after framing issues	In reply to the application, the opposite party may file only documentary evidence and state the issues involved in the dispute for trial and further evidence that will be brought on record at trial.
7.	Suit is decreed summarily or leave granted conditionally or	Claim is allowed partly, fully or conditionally,

	unconditionally to try the same as a regular suit.	<p>dismissed with or without costs.</p> <p>Court may direct deposit of a sum of money: direct the party to take specified step in relation to the claim or defense.</p> <p>Court may also order for striking out pleadings on whole or in part; or</p> <p>Direct a party to provide security.</p>
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10. Case Management Hearing under Order XV-A : From the date of filing affidavit of admissions and denials of documents- First case management hearing to take place **within 4 weeks**

- i) Issues
- ii) Pending IAs disposal
- iii) Fixing of dates for filing affidavit evidence and cross examination etc.
- iv) Fixing date for written arguments
- v) Fixing dates for oral arguments (**oral argts. to be completed within 6 months from 1st CMH**)
- vi) Fixing dates for revised written arguments

v) Judgment (**90 days from the date of completion of oral arguments**)

CALENDAR OF HEARING

Sl.No.	Date	Stage
1		Affidavits in lieu of evidence of the parties and their witness/s after duly serving the same on the other side by e-mail/Courier.
2		Further Examination-in-Chief of the Plaintiff/witness and marking of documents.
3		Cross examination of the Plaintiff/witness by the Defendant/s
4		Further cross examination of the Plaintiff/witness/s by the defendants (if any).
5		Further Examination-in-Chief of the defendant/s and witness/s and marking documents.
6		For cross examination of the defendant/s and witness/s.
7		For further cross examination of the Defendant (if any)
8		For written arguments of the parties after due service on the other side
9		Plaintiff's oral arguments.
10		Further arguments of Plaintiff (if any).
11		Defendant's oral arguments.
12		Further arguments of the Defendant (if any).
13		For revised written arguments after duly serving the same on the otherside
14		For Judgment.

Arbitration Suits

1. Sec.34 A and C Act scope is limited.

2. AS has to be filed within 90 days from the date of Award.
3. If AS is filed after 90 days the it shall be accompanied by application for condonation of delay.
4. Defendant has to file objection statement.
5. Copies of LCR if not produced, it has to be called for
6. If fraud coercion is pleaded against the arbitrators, then evidence is necessary, or else only argts.

Eviction suit, commercial execution will have to be entertained. For execution 0.75 percent CF has to be paid.

IO can be passed in AS prohibiting from alienation.

90 days has be fixed for disposal of IA.

No ex parte ABJ can be granted only after notice. After appearance conditional order has to be passed by giving 15 days time to offer security.

If not complied, ABJ has to be made absolute.

O.39 order 30 days for disposal.

Order 1 Rule 10 can be entertained. No amendment.

Order 32 Rule 4 cannot be permitted after fling of suit.

Order 14 recasting of issues not applicable.

Summary suits. Summons has to be served within 10 days. It is duty of plaintiff. Only affidavit evidence. No marking documents.

Arbitration suit under old Act Sec.33.

Important tips regarding commercial suits and related subjects

1. After filing of the suit, if certificate of pre-institution mediation is not produced, then we have to return the plaint to exhaust the remedy. However, Sec.12A is not applicable for suits received on transfer.
2. If IA filed for interim relief, then we can dispense such certificate and grant IO provided *bona fides* are made out. Refer Sec.12A
3. We can pass order if *prima facie* case is made out.
4. WS has to be filed within 120 days, not beyond that. 90+30 days.
5. After completion of pleadings, it shall be posted for case management hearing. Sec.15A Rule 2 of CPC.
6. We have to direct the parties to file original documents relied upon by them in the suit.

7. Both side should inspect the documents and file admission and denial statement in the form of affidavit.
8. After framing issues, both sides are to be directed to file chief examination affidavit of all the witness to be examined by them in the suit.
9. Thereafter, witnesses are to be cross examined. No longer date can be given.
10. Documents can be received by condoning the delay under Order 11 Rule 5 for plaintiff and rule 9 for defendants.
11. No re-opening or recall
12. Then argts. Short date and judgment within 60 days. Suit has to be disposed within 500 days from the date of institution of suit.
13. Notice to produce can be made only before framing issues.