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Dispute Resolution and Arbitration

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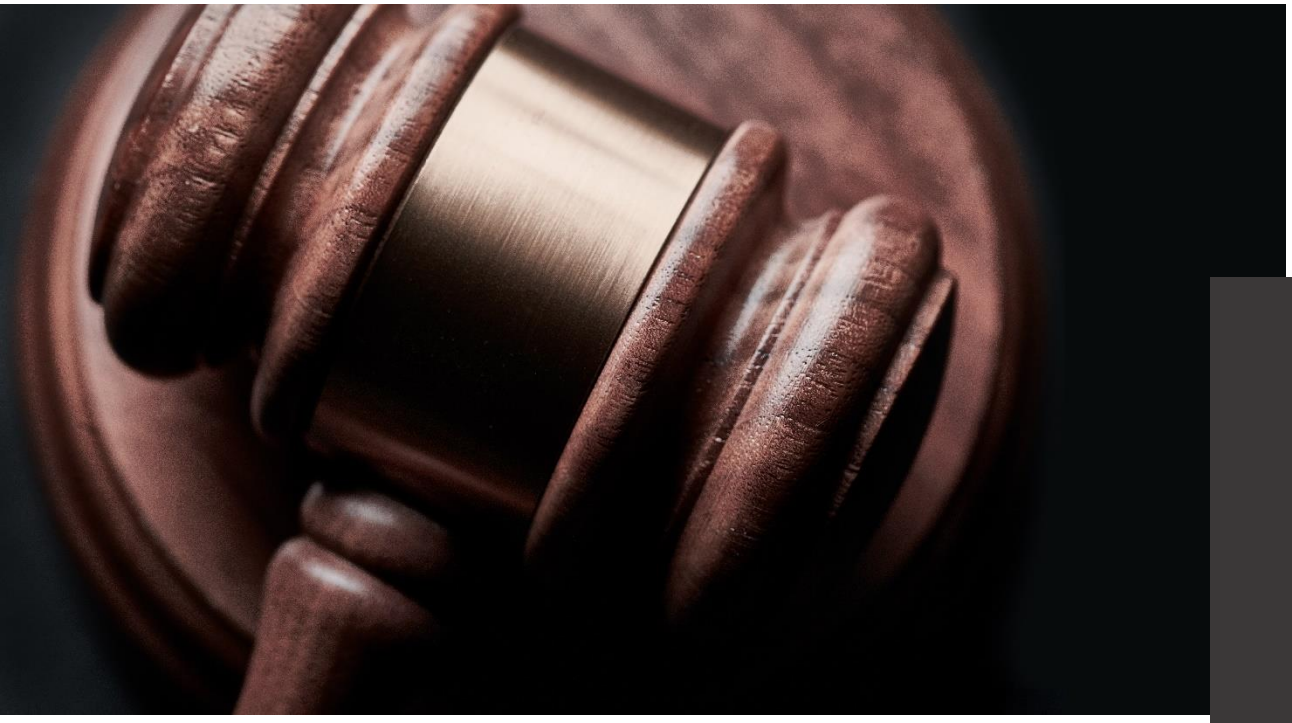
DISPUTE RESOLUTION AND ARBITRATION UPDATE



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NTPC Ltd v. Deconar Services Pvt Ltd

Civil Appeal Nos. 6483-6484 of 2014

Background facts

- NTPC Ltd (**Appellant**) issued two tenders for the construction of certain quarters wherein Deconar Services Pvt Ltd (**Respondent**) showed keen interest. After taking into account Respondent's proposal of a 16% rebate on the prices for completing the first project, the Appellant awarded both the contracts to the Respondent and issued two Letters of Award dated June 29, 1988 to this effect.
- The Appellant delayed handing over the sites to the Respondent, which delayed the completion of the construction of quarters under both contracts. Thereafter, disputes arose between the parties regarding the final payment due to the Respondent and arbitration was invoked.
- Subsequently, an Arbitrator was appointed in the matter. Vide an award dated July 07, 2000, the Arbitrator granted reliefs to the Respondent under different heads of the contract and also awarded substantial interests on the amount claimed/awarded.
- Discontented by this, the Appellant filed objections against the arbitral award in the Delhi High Court under Sections 30 and 33 of the Arbitration Act, 1940 (**Act**). Vide separate Orders dated December 16, 2009, Single Judge of Delhi HC dismissed the objections of the Appellant with cost and made the award an order of the Court.
- Aggrieved by this, the Appellant preferred an appeal before Division Bench of Delhi HC under Section 39 of the Act. However, vide a common judgment dated April 09, 2010 the Court dismissed the appeal with cost of INR 10,000.
- Aggrieved by the same, the Appellant preferred the present Civil Appeals by way of Special Leave against the impugned judgment.

Issues at hand?

- Whether the Arbitrator incorrectly granted refund of the rebate to the Respondent?
- Whether the Arbitrator had jurisdiction to grant escalation charges to the Respondent for work done beyond the scheduled period?
- Whether the costs imposed by the forums on the Appellant are acceptable?

Decision of the Court

- At the outset, SC illustrated the standard laid down in *Kwality Manufacturing Corporation v. Central Warehousing Corp*[1] to analyze the extent of interference by Courts in arbitral awards passed under the Act and derived that the Court does not sit in appeal over the findings and decisions of the Arbitrator. Furthermore, on the stretch of principles laid down in *Arosan Enterprises Ltd. v. Union of India*[2], the SC highlighted the settled proposition that where the Arbitrator has taken a view, although a different view may be possible on the same evidence, the Court would not interfere with the award.
- From the above precedents, SC asserted that purely exhibiting another reasonable interpretation based on the material on the record, is not enough to allow for the interference by the Court. It deduced that the existence of one of the following instrumental elements must be proved by the Objector to succeed in his challenge against an arbitral award:
  - The award passed by the Arbitrator suffered from an irregularity
  - An error of law
  - The Arbitrator has otherwise misconducted himself
- With regards to the first issue, the SC took into consideration the alternate interpretation put forth by the Appellants on the basis of a letter dated June 14, 1988 stating that the rebate was granted merely for awarding both sets of contract to the Respondent. While SC was in agreement that aforesaid interpretation is possible, it was opined that this is not sufficient to interfere with award passed by the Arbitrator. It was reiterated that the Court does not sit as an Appellate Court over the decision of an Arbitrator and cannot substitute its views for that of the Arbitrator as long as the Arbitrator had taken a possible view of the matter. In the present case, Arbitrator had given clear reasoning for possible view taken by him on interpretation of contract between parties and, as such, the Courts rightly refused to interfere with the holding of the Arbitrator on the first issue.
- With reference to the second issue, SC relied upon its decision in the matter *Assam State Electricity Board v. Buildworth Pvt Ltd*[3] which dealt with almost identical circumstances. In this case, SC upheld the decision of the Arbitrator granting escalation charges beyond what was permissible under the contract between the parties, which prescribed a cap on the same. The SC held that, in the present case, the Arbitrator has constructed the contract and the fixed price clause in the same manner as was the case in *Assam State Electricity Board (Supra)*. The construction was on the basis of the evidence on record and the submissions of the counsel before him and that the Arbitrator had carefully delineated the period of delay attributable to the Appellant and granted the claim of the Respondent only to that limited extent.
- Additionally, the SC further held that any decision pertaining to whether an Arbitrator can award a specific claim or not, will rest majorly on the construction of the contract, the evidence placed before the Arbitrator and other facts and circumstances of the case. In the light of the above, the SC answered the second issue in affirmative and in favor of the Respondent.
- While handling the last issue regarding the imposition of costs on the Appellant, the SC chose to not interfere with the same, in view of the fact that the Counsel for the Appellant had not pressed the same.
- Seeing no reason to interfere with the impugned Judgment passed by the HC, the SC dismissed the present Civil Appeals.

Our view

The instant judgment solidifies the position of the Courts in maintaining that there must be a minimal scope of intervention in arbitral proceedings as the Courts do not sit in appeal over the findings and decisions of an Arbitrator. The judgement clasps the hands of the party unnecessarily prolonging the litigation and hence, tends to avoid multiplicity of proceedings. This decision strengthens the SC's decision in the matter of matter *Assam State Electricity Board (supra)*, whereby the Court had upheld the decision of the Arbitrator to grant escalation charges beyond what was permissible under the contract between the parties, which prescribed a cap on the same.

Interdigital Technology Corp v. Xiaomi Corp & Ors

I.A. 8772/2020 in CS(COMM) 295/2020

Background facts

- Interdigital Technology Corporation (**Plaintiff**) had licensed its 3G and 4G Standard Essential Patents (**SEPs**) to third parties and invited Xiaomi for getting such license, but the Plaintiff rejected the rate proposed by Xiaomi as the proposed rate was not in confirmation to FRAND (fair, reasonable and non-discriminatory) parameters.
- Later it was found by the Plaintiff that Xiaomi was in the infringement of SEPs, as it was using the said SEPs without a valid and executed license agreement. As a result, Plaintiff moved the High Court against the above-mentioned infringement of its SEPs by Xiaomi.
- Meanwhile, Xiaomi had already filed an 'anti-suit injunction' in the Wuhan Intermediary People's Court, China (**Wuhan Court**). The Wuhan Court had, vide its order dated September 23, 2020, restrained the Plaintiff from filing lawsuits before any courts in either China or any other countries

[1] (2009) 5 SCC 142
[2] (1999) 9 SCC 449
[3] (2017) 8 SCC 146

and/or regions requesting to adjudicate the royalty rate of the royalty disputes in terms of the 3G and 4G SEPs against Xiaomi. It also directed the Plaintiff to immediately withdraw or suspend their application for any temporary injunction before HC against Xiaomi Communications Co Ltd, Xiaomi Home Commercial Co Ltd, and Beijing Xiaomi Mobile Software Co Ltd.

Issues at hand?

- Whether an injunction against Defendant Nos. 1 to 8 can be granted for restraining them from enforcing an anti-suit injunction order (dated September 23, 2020, passed by the Wuhan Court) against the Plaintiff?
- Whether the costs equivalent to the costs likely to be imposed on the Plaintiff by the Wuhan Court can be imposed on the Defendants?

Decision of the Court

- After taking into consideration the case of *IPCom GmbH & Co KG v. Lenovo Technology (United Kingdom) Ltd*[4], HC with regards to the primary issue held that a sovereign court in one jurisdiction (former court) cannot injunct proceedings in a sovereign court in another jurisdiction (latter Court), especially in the realm of infringement of intellectual property rights, which are maintainable only before such latter court and none other.
- Any such injunction as mentioned above would be equal to an assault on the rights of the litigant before the latter Court. Moreover, in the absence of any cogent and convincing material to indicate that the continuation of the proceedings before the latter Court would be oppressive or vexatious to the proceedings pending before the former, such injunction would be completely unjustified in law.
- The Court also applied troika test (prima facie case, balance of convenience and irreparable loss) and held that the grant of anti-enforcement injunction, as sought by the Plaintiffs, would be eminently justified on the basis of the above-mentioned test. Hence the ad interim injunction granted by the Court on October 09, 2020 was made absolute i. e the Defendant was restrained from enforcing against the Plaintiff the order dated September 23, 2020, passed by the Wuhan Court.
- On the issue of imposing cost on the Defendants, the Court held that the Defendants had resorted to malice and unfair practice in securing the order from the Wuhan Court by keeping both the Plaintiffs as well as Court in dark. The Court stated that if the Wuhan Court directs payment of the fine towards enforcement of its anti-suit injunction order, the brunt has to be borne by the Defendants based on the findings of this Court in the present case.
- The Court took into consideration that once it has been decided that the enforcement of the anti-suit injunction order of the Wuhan Court deserved to be injuncted, then it merely acts as a sequitur that the Plaintiffs cannot be fastened with the fine imposed by said order of the Wuhan Court.

Our view

HC gave a very positive and important decision in this matter wherein it held that any court in one sovereign jurisdiction cannot injunct the legal proceedings in any court in another sovereign jurisdiction, as this is completely against the basic principles of natural justice. Furthermore, imposing cost on the defendant was vital for setting a precedent that the act committed by them - secretly filing of an anti-suit injunction before the Wuhan court without informing either the HC or the Plaintiff - is unpardonable and smacks of disregarding the majesty of the HC.

India Resurgence Arc Pvt Ltd v. Amit Metaliks Ltd & Ors

MANU/SC/0367/2021

Background facts

- The Appellant company is said to be the assignee of the rights, title and interest carried by Religare Finvest Ltd as secured financial creditor of the corporate debtor, having 3.94% of voting share in the Committee of Creditors (**CoC**).
- When the Resolution Plan submitted by the Respondent No. 1 was taken up for consideration by the CoC, the Appellant expressed reservations on the share being proposed, particularly with reference to the value of the security interest held by it. It chose to remain a dissenting financial creditor.
- However, a substantial majority of other financial creditors voted in favor of the Resolution Plan and, therefore, the Resolution Plan got the approval of 95.35% of voting share of the financial creditors.
- The said Resolution Plan, as approved by the vast majority of voting share in the CoC, was submitted for approval by the resolution professional to the Adjudicating Authority. The Adjudicating Authority proceeded to approve the Resolution Plan while observing in its order dated October 20, 2020.
- No objection to the Resolution Plan was placed before the Adjudicating Authority for consideration. However, the Appellant preferred an appeal against the said Order under Section 61(1) read with Section 61(3) of the Code.

[4] (2019) EWHC 3030 (Pat)

Issues at hand?

- Whether the Impugned Order of Appellate Authority is legally sustainable when such Authority rejected the challenge of Appellant to the order dated October 20, 2020 passed by the NCLT, Kolkata Bench, in approving the Resolution Plan in the corporate insolvency resolution process?
- Whether the approved Resolution Plan failed the test of being 'feasible and viable' inasmuch as the value of the secured asset, on which security interest was created by the corporate debtor in its favor, was not taken into consideration?

Decision of the Court

- Having considered the statutory provisions, the Court held that as regards the process of consideration and approval of Resolution Plan, it is now beyond a shadow of doubt that the matter is essentially that of the commercial wisdom of the CoC.
- The scope of judicial review remains limited within the four-corners of Section 30(2) of the Code for the Adjudicating Authority and Section 30(2) read with Section 61(3) for the Appellate Authority. Once it is found that all the mandatory requirements have been duly complied with and taken care of, the process of judicial review cannot be stretched to carry out quantitative analysis qua a particular creditor or any stakeholder, who may carry his own dissatisfaction.
- Every dissatisfaction does not partake the character of a legal grievance and cannot be taken up as a ground of appeal as per the scheme of IBC.
- The purport and effect of amendment to Sub-section (4) of Section 30 of the Code, by way of Amending Act of 2019, was explained in Essar Steel and was duly taken note of by Appellate Authority. It was reiterated that the provisions of amended Sub-section (4) of Section 30 of the Code, on which excessive reliance is placed on behalf of the Appellant, do not make out any case for interference with the resolution plan at the instance of the Appellant.
- NCLAT was correct in observing that such amendment to Sub-section (4) of Section 30 only amplified the considerations for the CoC while exercising its commercial wisdom so as to take an informed decision in regard to the viability and feasibility of Resolution Plan, with fairness of distribution amongst similarly situated creditors.
- The business decision taken in exercise of the commercial wisdom of CoC does not call for interference unless creditors belonging to a class, being similarly situated, are denied fair and equitable treatment. Upon perusal of the financial proposal in the Resolution Plan, the Court held that the proposal for payment to all the secured financial creditors is equitable and the proposal for payment to the Appellant is at par with the percentage of payment proposed for other secured financial creditors. Hence, no case of denial of fair and equitable treatment or disregard of priority is made out.
- Repeated submissions of the Appellant with reference to the value of its security interest neither carry any meaning nor any substance. What amount is to be paid to different classes or subclasses of creditors in accordance with provisions of the Code and the related Regulations, is essentially the commercial wisdom of the CoC and a dissenting secured creditor like the Appellant cannot suggest a higher amount to be paid to it with reference to the value of the security interest.
- In Jaypee Kensington, it was clarified that a dissenting financial creditor would receive payment of the amount as per his entitlement and that entitlement could also be satisfied by allowing him to enforce the security interest to the extent of the value receivable by him. It has never been laid down that if a dissenting financial creditor is having a security available with him, he would be entitled to enforce the entire of security interest or to receive the entire value of the security available with him and his dealing with the security interest, if occasion so arise, would be conditioned by the extent of value receivable by him.
- The extent of value receivable by the Appellant is distinctly given out in the Resolution Plan which is in the same proportion and percentage as provided to the other secured financial creditors with reference to their respective admitted claims. The limitation on the extent of the amount receivable by a dissenting financial creditor is innate in Section 30(2)(b) of the Code and has been further exposited in previous decisions.
- It has not been the intent of the legislature that a security interest available to a dissenting financial creditor over the assets of the corporate debtor gives him some right over and above other financial creditors so as to enforce the entire of the security interest and thereby bring about an inequitable scenario by receiving excess amount, beyond the receivable liquidation value proposed for the same class of creditors.
- The Apex Court dismissed the Appeal.

Our view

This judgment upholds the principal of minimal judicial interference in decisions taken by the CoC within the realm of its commercial wisdom and further analyses and balances any conflict with individual interests of a financial creditor with those of others viz-a-viz the sufficiency of securities held by such financial creditor.

M Abubaker & Ors v. Abdul Kareem

S.A.(MD)No.122 of 2013 and M.P.(MD)No.1 of 2013

Background facts

- Mr. Abdul Kareem (**Plaintiff-Respondent**), member of TWAD Board, interrogated the functioning of the local mosque in the area. The mosque was under the supervision of the President of the Jamath, who turned out to be the brother-in-law of Mr. Abubaker, one of the Defendant-Appellant. The Appellant filed a complaint against the Respondent and his son, alleging that the Respondent threatened him by flashing a knife and thus, committed the crimes of criminal trespass and criminal intimidation. Consequently, the Respondent was arrested and held in custody for more than 24 hours.
- Thereupon, after his acquittal, the Respondent filed a suit to seek compensation from the Appellants, including the witnesses, for maliciously prosecuting him collectively. However, suit was dismissed by Trial Court.
- Challenging the same, the Respondent filed an appeal whereby First Appellate Court allowed the appeal and ruled in support of the Respondent. Thus, the decision of Trial Court was reversed by First Appellate Court.
- Discontented by this, the Appellants filed the present second appeal in the Madhurai Bench of Madras HC.

Issues at hand?

- Whether the First Appellate Court ought to have seen that there was no cause of action against Appellants 2 to 6 as they figured only as witnesses in the criminal case?
- Whether the First Appellate Court failed to note that the necessary ingredients for proving the claim of malicious prosecution are not present in this case?
- Whether the First Appellate Court ought to have seen that the Plaintiff-Respondent failed to discharge the burden of proof cast on him?

Decision of the Court

- HC took note of the poorly drafted fundamental questions of law and observed that although Section 100 (4) of CPC allows the HC to revise the substantial questions of law whenever necessary, it is impractical to implement this because of the judicial backlog. In furtherance, the HC remarked that the draft must be free from errors and the Counsel must exercise diligence while drafting.
- In view of the first issue, HC held that a suit for malicious prosecution will only be shouldered by those individuals who fueled the onset of the proceeding. After careful analysis, the HC arrived at the conclusion that merely assisting the prosecution will not thereby render the witnesses to be labelled as prosecutors. Furthermore, HC advanced that the Respondent may sue them for perjury instead, but in a different suit and, thus, answered the first question in favor of the Appellants.
- While deciding the second and third issue, HC commented on the duty of the Civil Court in a suit for malicious prosecution by pointing that the Court must undertake an independent enquiry and must not adopt the grounds of acquittal formulated by the Magistrate to grant decree to the Respondent. Moreover, the HC discussed at length the rules of proving malice and the touchstone of shifting of the onus of proof on the stretch of principles laid down in *Bharat Commerce and Industries Ltd v. Surendra Nath Shukla & Ors*[5] and *Sudhir Chandra Pal v. Rajeswar Datta*[6].
- HC also made a reference to *Satdeo Prasad v. Ram Narayan*[7] and affirmed that since in the instant case, the Plaintiff has triumphantly substantiated that the allegations levelled against him were constructed imaginarily and has advanced the evidence which reflects the existence of malice on the part of the Defendant, the onus shifted to the Defendant as regards to the non-existence of reasonable and probable cause.
- Additionally, HC illustrated the precedent laid down in *Balbhaddar Singh v. Badri*[8] to emphasize that the Plaintiff in a suit for malicious prosecution is not required to prove that he was guilt-free of the accusations upon which he was tried and thus, need not undergo the agni pariksha or the unpleasant experience twice. Conversely, it is the prosecutor who must face the onerous task once it is relocated towards him. Therefore, in the present case, HC concluded that the Respondent has successfully established that the accusations against him were fabricated whilst the Appellants have fallen flat while striving to lift the onus. The HC investigated the roots of the complaint against the Plaintiff and reached the verdict that the complaint was filed without an apparent cause, let alone reasonable and probable cause.
- HC answered the second and third issue in negative and in favor of the Respondent. In addition, the HC enumerated the loss and injury suffered by the Respondent and directed the Appellant to pay INR 50,000 with interest as compensation to the Respondent.

Our view

The judgement is noteworthily and highlights the impracticality of Section 100 (4) of CPC and the need of error-free draftsmanship. It also explicitly demarcates the onus which must be assumed by the parties in a suit for malicious prosecution. The decision gives an edge to the honest plaintiffs by engraving that he is not required to prove the negative and, thus, need not undergo the agni pariksha twice.

[5] AIR 1966 Cal 388
[6] AIR 1972 (Gau) 119
[7] AIR 1969 Pat 102
[8] Sah (AIR 1926 PC 46)

Deepa Jayakumar v. A. L. Vijay & Ors

O.S.A.No.75 of 2020

Background facts

- The Applicant took exception to an Order dated December 12, 2019, passed by the Single Judge, in the Application preferred by the Plaintiff against the Respondents for a declaration that the Respondents do not have any legal right, power and authority to publish, release, make, or exhibit the web series, in the name of the Former CM Late Dr. J Jayalalithaa and her family and their direct descendants without seeking permission from the Applicant and for a permanent injunction to restrain the Respondents from performing the aforesaid acts.
- Till the time suit was pending in between the Applicant filed the Original Application No. 1102 of 2019 seeking an interim injunction for restraining the Respondents from, 'directly or indirectly, releasing, publishing, or exhibiting a film, drama, serial, tele-serial, web serial, etc.' in respect of the life of the late Dr. J. Jayalalithaa or that of her family and their direct descendants.

Issues at hand?

- Whether the Applicant has made out a case for the grant of an interim injunction against the Respondents?
- Whether the acts of Respondents are in violation of Fundamental Right to Privacy and the Personality Rights of the Applicant/Plaintiff's aunt?
- Whether the Applicant is entitled to restrain the public exhibition of the web series in exercise of the posthumous Right of Privacy remains to be considered?

Decision of the Court

- The Court held that the release of the film would be subject to certification by the Central Board of Film Certification (**CBFC**) and during the said certification process, if there is any objectionable material present in the film then the CBFC would raise objections and, if necessary, it would insist upon deleting such objectionable part as a pre-condition for grant of the certificate for releasing the film.
- The Court took into consideration the cases cited by the respondents and held that Applicant's right to restrict the release of the web series in order to protect the posthumously Right to Privacy of her later aunt without her consent, appear prima facie to be tenuous. It was also held that the principles laid down in the *Kirtibhai v. Raghuraman*[9] were to apply.
- Reliance was also placed on the case of *Puttaswamy & Anr v. Union of India & Anr*[10] on the issue of Right to Privacy, wherein SC had held that 'Right to Privacy of any individual is essentially a natural right, which inheres in every human being by birth. Such right remains with the human being till he/she breathes last and is indeed inseparable and inalienable from human being.
- The Court also relied upon judgement of the Bombay High Court in the case of *F.A. Picture International v CBFC*[11] where it was held that 'those who hold important positions must have shoulders which are broad enough to accept with grace a critique of themselves and critical appraisal is the cornerstone of democracy. The power of the film as a medium of expression lies in its ability to contribute to that appraisal and the film-maker cannot be compelled to portray only a particular version of the facts.'
- The Appeal was dismissed by upholding the judgment passed by the Single Judge of the Court, with exception recorded that the Respondent would adhere to the commitment of providing a disclaimer 'that it is a work of fiction and that resemblance to real persons is coincidental and not intentional and also ensure that no character closely resembling the Applicant is depicted in the web series.'

Our view

By way of the present order, the High Court has rightly held that the Applicant is not liable to be given the interim injunctive relief, as she is neither a near relative of the Former CM nor she is the daughter or even a member of the same household.

Also, the Court has dealt the question of cases pertaining to posthumous Right to Privacy, which if being allowed, then the cases pending in various courts across the country, would lead to infringement of Right to Freedom of artistic expression as "the constitutional Right to Freedom of speech and expression is not conditioned or restricted on the premise that a film-maker must portray only a particular version of facts".

Mangala Waman Karandikar (D) tr. L.Rs. v. Prakash Damodar Ranade

Civil Appeal No. 10827 of 2010

Background facts

- This appeal arises out of a contract entered into between the Appellant (since deceased represented through Legal Heirs) and the Respondent.
- Initially Appellant's husband was running a business of stationary in the name of 'Karandikar Brothers' before his untimely demise in the year 1962. After his demise, she continued the business for some time. After a while, she was unable to run the business and accordingly decided to let the

[9] Appeal from Order No. 262 of 2007
[10] 2017 (10) SCC 1
[11] AIR 2005 Bombay 145

Respondent run the same for some time. She entered into an agreement dated February 07, 1963 (**Agreement**) which was extended time after time.

- In 1980s, desiring to start her husband's business again, Appellant herein issued a notice dated December 20, 1980 requesting the Respondent herein to vacate the suit premises by January 31, 1981. The Respondent replied to the aforesaid notice claiming that the sale of business was incidental when the contract was rather a Rent Agreement *stricto sensu*.
- Aggrieved by the Respondent's reply, the Appellant herein filed a civil suit being RCS. No. 764 of 1981 before the Court of Joint Civil Judge, Junior Division, Pune.
- The Trial Court by judgment dated August 30, 1988, decreed the Suit in favor of the Appellant and held that the purport of the Agreement was to create a transaction for sale of business rather than to rent the aforesaid premises to the Respondent. The contention of the Respondent that the shop premises was given to him on license basis was also negated. Accordingly, the Trial Court ordered the Respondent to hand over the suit property to the Appellant including the furniture and other articles.
- Aggrieved by the Trial Court judgment, the Respondent filed an Appeal before the Court of Additional District Judge, Pune. On July 29, 1991, the Additional District Judge rendered a judgment dismissing the appeal filed by the Respondent.
- Aggrieved by the dismissal the Respondent herein filed a Second Appeal before the HC of Bombay in Second Appeal No. 537 of 1991.
- By Impugned Order dated November 07, 2009 the HC of Bombay allowed the Second Appeal and set aside the Trial Court's Order as well as the First Appellate Court's Order while it held that the Respondent had entered into a license agreement which is covered under Section 15A of the Bombay Rent Act. Further the HC held that the Trial Court did not have the jurisdiction to try the case under the Bombay Rent Act, and the appropriate Court should have been Small Causes Court established under the Provincial Small Causes Court Act.
- Aggrieved by the same, the Appellant filed this appeal.

Issues at hand?

- Whether the Agreement of February 07, 1963 was a license to conduct a business in the premises or was a license to run the existing business which was being run by the Respondents in the suit premises?
- Whether the document create an interest in the premises or merely an interest in business?

Decision of the Court

- At the outset, there is a need to observe some principles on contractual interpretation. Unlike a statutory interpretation, which is even more difficult due to assimilation of individual intention of law makers, contractual interpretation depends on the intention expressed by the parties and dredging out the true meaning is an 'iterative process' for the Courts. In any case, the first tool for interpreting, whether it be a law or contract, is to read the same. In a document the language used by the parties may have more than one meaning and it is ultimately the responsibility of the Courts to decipher the meaning of the words used in a contract, having regards to a meaning reasonable in the line of trade as understood by parties.
- HC held that it is clear from the reading of the contract that the parties had intended to transfer business from Appellant to Respondent during the contractual period. This Agreement was not meant as a lease or license for the Respondent to conduct business.
- Sections 92 and 95 of the Evidence Act provide that resort could be had to the proviso to Section 92 only in cases where the terms of the document leave the question in doubt, which in the present case does not apply since there in no ambiguity in the terms of the contract. A contrary view, if adopted, would render Section 92 of the Evidence Act otiose and also enlarge the ambit of proviso 6 beyond the main Section itself. The interpretation adopted by the High Court violates basic tenets of legal interpretation. Section 92 specifically prohibits evidence of any oral agreement or statement which would contradict, vary, add to or subtract from its terms.
- If oral evidence could be received to show that the terms of the document were really different from those expressed therein, it would amount to accord permission to give evidence to contradict or vary those terms and as such it comes within the inhibitions of Section 92. It could not be postulated that the legislature intended to nullify the object of Section 92 by enacting exceptions to that section.
- The contract mandated continuation of the business in the name of 'Karandikar Brothers' by paying royalties of INR 90 per month. Once the parties have accepted the recitals and the contract, the Respondent could not have adduced contrary extrinsic parole evidence, unless he portrayed ambiguity in the language. The extension of the contract was on same conditions.

Our view

This judgment is laudable since it provides primacy to the understanding between the parties to a contract viz-a-viz the provisions of the Evidence Act, when the terms of the contract are unambiguous and command the nature of relationship de hors any evidence contrary to such terms. This clarity on non-admissibility of such evidence leads to the much-intended expeditious disposal of a judicial proceeding cutting short the process of evidence and trial.

- The High Court erred in appreciating the ambit of Section 95, which led to consideration of evidence which only indicates breach rather than ambiguity in the language of contract. Evidence also elucidated that the license was created for continuation of existing business, rather than license/lease of shop premises.
- If the meaning accorded by HC was accepted, it would amount to Courts substituting the bargain by the parties. The counsel for Respondent has emphasized much on the receipt of payment, which mentions the term 'rent received'. However, in line with the clear unambiguous language of the contract, such evidence cannot be considered in the eyes of law.
- Further, the contention of the aforesaid situation being covered by the Bombay Rent Act is misplaced. Once it has been determined that the impugned agreement was a license for continuing existing business, Bombay Rent Act does not cover such arrangements. Therefore, the jurisdiction of the Trial Court is accordingly not ousted.
- In light of the above, the appeal was allowed.

Ashiq Ali & Ors v. Yasin Mistri & Ors

RSA No. 623 of 2008 along with RSA No. 624 of 2008

Background facts

- In the present case, Smt. Tulsa, the mother of Appellant No. 1 and Respondents and grandmother of the Appellants No. 2 to 4, executed a Will in favor of the Appellants No. 2 to 4, in connection to the properties owned and possessed by her solely.
- The Respondents questioned the authenticity of the Will by filing a civil suit for declaration and permanent prohibitory injunction against the Appellants. The Respondents main challenge was that even if the Will is held to be legitimately executed, it cannot operate beyond 1/3rd share in the properties owned by Smt. Tulsa, as the Will beyond 1/3rd share by Muslims is not allowed under Personal Law.
- The Trial Court held the Will to be legally valid. However, since the parties are governed by Personal Law, the Will was held to be valid only to the extent of 1/3rd share and remaining 2/3rd share was held to have devolved upon the legal heirs of late Smt. Tulsa.
- Aggrieved with the Decree passed by the Trial Court, the Appellants filed an appeal before the Appellate Court and the Respondents also filed separate appeal challenging the decree to the extent which was against them. Appellate Court dismissed the appeal filed by the Appellants on the ground of absenteeism of the scribe of the Will who was alive and disregarded the testimony of one of the attesting witnesses, Mr. Lavinder Singh who duly endorsed the Will. Thus, the Will was held to be legally unacceptable, and the order of the Trial Court was set aside by the Appellate Court.
- Indignant by this, the Appellants preferred the Regular Second Appeals in the High Court of Himachal Pradesh (**HC**).

Issues at hand?

- Whether adverse interference against the due execution of legal and valid Will could be drawn by the learned Appellate Court for not examining the scribe to prove the Will?
- Whether the learned first Appellate court has misread and mis-appreciated the statement of Lavinder Singh, the attesting witness who has supported the due execution and attestation of the Will and the findings recorded by the first Appellate Court are vitiated on this count?

Decision of the Court

- The Appellants strongly refuted that there was no requirement of law to examine the scribe of the Will, moreso when Lavinder Singh, one of the attesting witness, has already been examined. On the other hand, the Respondents highlighted that a Mohammedan Will is required to be examined under the provisions of Section 67 of the Evidence Act, 1872 (the Act) and fortified this by placing reliance on *Mehandi Hassan & Ors v. Rafiquan & Ors*[12].
- At the outset, the HC noted that the case falls within the purview of Mohammedan Law and thus, inferred that a valid Will by a Mohammedan will not be for more than 1/3rd of the surplus of his/her estate and that to a non-heir. The HC placed the order of the Appellate Court at its center of focus, wherein it was held that there is no evidence to prove that the Will was executed because the scribe had not been produced in the witness box nor was his statement taken down by appointment of commissioner, and Lavinder Singh asserted to have not seen Smt. Tulsa signing the Will.
- The HC perused Section 67 of the Act and confirmed that where the document is written by one person and signed by another, the handwriting of the former and the signature of the later both

[12] (2001) 2 Shim. LC. 231

must be proved in view of Section 67 of the Evidence Act. The HC interpreted Section 67 of the Evidence Act that it focuses on the signature of a witness who counter signs a document as a person who was present at the time when the document was signed by another person. This clarification given by the HC is in conformity with the decision of the learned Division Bench of the Gujarat High Court in *Miyana Hasan Abdulla & Anr v. State of Gujarat*[13]. Thus, the HC underpinned the findings of the Appellate Court in speculating against the Appellants for not examining the scribe of the document Shri Shamshad Ahmed Qureshi, who was very much alive at that time and even if he was suffering from ailment, his statement could have conveniently been recorded on commission. Furthermore, the HC held that the non-examination of the scribe is cardinal because the witness Lavender Singh DW-2 declares to not have witnessed Smt. Tulsa, the testator, putting her signatures over the Will. In the light of the above, the HC answered first issue in affirmative while the second issue in negative.

- The Court also observed that the amount demanded in the Information Memorandum does not help the Respondent since the IBC and the CIRP regulations provide for specific procedural provisions for submission of claims under Regulations 7 and 12 read with Form B of the Schedule to the CIRP Regulations, 2016.
- On the issue that the Respondent was rendered immobile with respect to filing a claim due to a stay on the award, the Court relied on the newly added Section 36 which made it clear that an award would not be stayed in the absence of an application for stay of the award under the amended Section 36 of the Act.

Our view

The HC's decision that as per Section 67 of the Evidence Act where the document is written by one person and signed by another, the handwriting of the former and the signature of the later both must be proved, is pivotal in ascertaining the legality of the testamentary instrument and clasps the hands of the dishonest parties in raising false claims in Wills. The HC's decision aligns with the position held in *Miyana Hasan Abdulla and another vs. State of Gujarat* and thus establishes this rule as a binding precedent.

Gagan Gupta & Ors v. Union Territory of Jammu and Kashmir

RP No. 3/2012 CM No. 500/2021 along with other batch matters

Background facts

- Several Writ Petitions were filed challenging the Notice for cancellation of temporary licenses dated December 14, 2005 addressed to the Petitioners by the Excise Commissioner. Certain other Writ Petitions were also filed seeking regularization of temporary licenses issued by the Competent Authority. All these petitions came to be decided by a common judgment dated February 06, 2017.
- The aforesaid judgment was challenged before Division Bench and challenge was made to the Excise Policy for the years 2017-2018. By way of amendment, the scope of challenge was extended to the Excise Policies for the years 2018-2019 and 2019-2020 as well.
- Division Bench vide judgment dated December 28, 2020 decided on the appeals (**Impugned Judgment**), which was sought to be reviewed by way of the current Review Petition.
- It is pertinent to note that Special Leave Petitions (**SLPs**) against the Impugned Judgment were also filed by a group of Petitioners who were not parties to the earlier petitions.

Issue at hand?

- Would it be legally permissible for the High Court (**HC**) to exercise its jurisdiction of review when the Supreme Court (**SC**) declined to interfere with the Impugned Judgment under review?

Decision of the Court

- At the outset, the Court segregated the Review Petition into three parts:
  - Petitioners who were parties to the proceedings before the Writ Court as well as before the Division Bench
  - Petitioners who were neither parties to the proceedings before the Writ Court nor before the Division Bench and they claim to be the parties affected by the judgment sought to be reviewed
  - Petitioners who were holding Excise Licenses under Form No. JKEL 3 (retail vends in a Hotel) and Form JKEL 4 (retail vends in a Bar attached to the restaurant, cinema/theatre or dak bungalow)
- With regards to maintainability of the Petitions, the Advocate for the Respondent contended that the Petition filed by certain Petitioners who had filed SLPs before the SC were not maintainable since the said SLPs were dismissed. In support of his aforesaid contention, the Advocate for the Respondent placed his reliance upon the SC's judgment in the matter of *Abbai Maligai Partnership Firm & Anr v. K. Santhakumaran & Ors*[14].

[13] AIR 1962 Gujarat 214
[14] (1998) 7 SCC 386

- In response to the aforesaid, Advocate for the Petitioners contended that since the said dismissal order was passed *in limine* without granting leave to appeal and not on merits, the HC was not precluded from deciding these Writ Petitions/Review Petition on merits.
- In order to address the issue at hand, the HC relied upon SC's decision in the matter of *Kunhayammed & Ors v. State of Kerala & Anr*[15] and held that an order of SC refusing special leave to appeal under Article 136 of the Constitution of India does not amount to saying that the order of the Court below stood merged in the order of the SC rejecting the SLP or that the order of the SC is the only order binding as *res judicata* in subsequent proceedings between the parties. The review jurisdiction of the HC in such cases remains unaffected and, therefore, the group of petitions in which SLPs were previously filed were held the be maintainable.
- With regards to the scope of review, HC first inspected Rule 65 of the Jammu and Kashmir High Court Rules, 1999 which deals with its power for review of a judgment and remarked that a plea for review of a judgment can be entertained only on the grounds mentioned in Order XLVII Rule 1 of the Code of Civil Procedure (**CPC**). The HC also took into consideration a plethora of judgments on the subject matter including SC's decision in the matter of *Shiv Dev Singh & Ors v. State of Punjab*[16], where it has been held that there is nothing in Article 226 of the Constitution to preclude a HC from exercising the power of review to prevent miscarriage of justice or to correct grave and palpable errors committed by it.
- With regards to the merits of the Petitions, HC went through the contentions of both parties and found that in guise of the said Petitions, the Petitioners tried to persuade HC to rehear the issues that have already been decided and certain other contentions were raised to canvass the point that Impugned Judgment was erroneous in law and that HC has proceeded on an incorrect premise of law.
- HC further remarked that simply because a judge was wrong in law, the same is no ground for a review even though it may be a ground for appeal. It was held that a Court cannot rehear and correct erroneous judgment by way of a review. A mere repetition of old and overruled arguments are insufficient for exercising jurisdiction of review.
- Having found no merit in the Petitions, the same were dismissed.

Our view

HC has correctly held herein that when the SC refuses special leave to appeal under Article 136 of the Constitution of India *in limine* by way of a non-speaking order, the same would not preclude the HC from exercising its review jurisdiction. Further, it is to be noted that scope of review is quite different from that of a Court's power to hear appeals. A Review Petition is filed against a Court's own order or judgment. The Court does not rehear the case at hand, as it would result in an Appeal. The purpose of a Review Petition is restricted to remedying an apparent error or any resultant grave injustice that has been the consequence of a decision of the Court. Therefore, in the present case, the HC was justified in dismissing the matter.

Roshni Sana Jaiswal v. Commissioner of Central Taxes, GST Delhi (East)

RSA No. 623 of 2008 along with RSA No. 624 of 2008

Background facts

- The Petitioner was acting as a director on the Board of Directors of a company, namely Milkfood Ltd. (**Company**), from 2006 to 2008. The Petitioner is also a shareholder in the said Company and owns approximately 14.33 % equity shares.
- The Respondent, based on the information received by him with regards to the Company availing Input Tax Credit (**ITC**) against fake/ineligible invoices/vouchers, commenced an investigation against it under Section 67 of the CGST Act.
- The Respondent claimed that the statement of the persons who controlled the entities, which enabled the Company to claim ITC, were recorded during the investigation. In this connection, the Respondent stated that 'the voluntary statement' of the Petitioner was recorded on December 03, 2020.
- In her statement made to the concerned officer, the Petitioner inter alia admitted that she had acted as a director of the company from 2006 to 2008, and after her retirement from directorship, she has been working in the company in the capacity of a mentor/advisor for which she received some renumeration in FY 2019-2020. According to the Petitioner, the aforesaid remuneration was given to her as she had been providing 'strategic guidance' to the Company.
- Based on the above-mentioned admission by the Petitioner, vide Orders dated December 07, 2020 the Respondent directed several bank accounts of the Petitioner to be provisionally attached.
- Being aggrieved qua the impugned action of the Respondent, the Petitioner approached the Delhi High Court by way of the instant Writ Petition.

Issue at hand?

- Whether the present Writ Petition is maintainable in light of the fact that the Petitioner had already availed the alternate remedy available to her under Rule 159(5) of the Central Goods and Services Tax Rules, 2017?

[15] (2000) 6 SCC 359
[16] AIR 1963 SC 1909

Decision of the Court

- HC rejected the Respondents submission that the instant petition under Article 226 of the Constitution of India should not be entertained as a recourse to an alternate remedy was already taken by the Petitioner since the exercise of power Section 83 of the Act was without jurisdiction. The fact that an alternate remedy is available to a litigant is a self-imposed limitation on the Court. The HC held that it can, and should, exercise its powers under Article 226 of the Constitution, amongst others, in cases where the impugned action or order concerned is without jurisdiction.
- The Court primarily held that the exercise of power by the Respondent as per Section 83 of CGST Act was without any jurisdiction as the Petitioner in the above-mentioned Writ Petition was a 'non-taxable person'.
- Further the Court took into consideration the relevant provisions of the CGST Act, namely Section 83 (1), wherein it stated that provisional attachment can be ordered only qua property, including bank account, belonging to the taxable person and Section 2(107) of CGST Act which provides that a person can be a taxable person only if the said person is registered or liable to be registered as per the CGST Act. Hence HC held that the Petitioner is a 'non-taxable person'.
- The HC held that the impugned action concerning provisional attachment of the Petitioner's bank accounts was unsustainable. In the zeal to protect the interest of the revenue, the Respondent cannot attach any and every property, including bank accounts of persons, other than the taxable person.
- In light of the aforesaid, HC allowed the captioned Petitioner and the Impugned Orders dated December 07, 2020 were quashed.

Our view

The Court rightly held that the exercise of power by the Respondent was without any jurisdiction as the Petitioner was a 'non-taxable person'.

Further with regards to Section 83 (1) of the CGST Act, the HC stated that provisional attachment can be ordered only qua property, including bank account, belonging to the taxable person. In this case the Petitioner did not come under the purview of Section 2(107) of CGST Act whereby a person can be classified as a taxable person only if the said person is registered or liable to be registered as per the CGST Act.

This is yet another case whereby the revenue department has gone over and beyond the power/ duties afforded to them under law. Section 83 of the CGST Act should not be utilized as a draconian measure by the revenue department in its favor to safeguard its own interests.

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