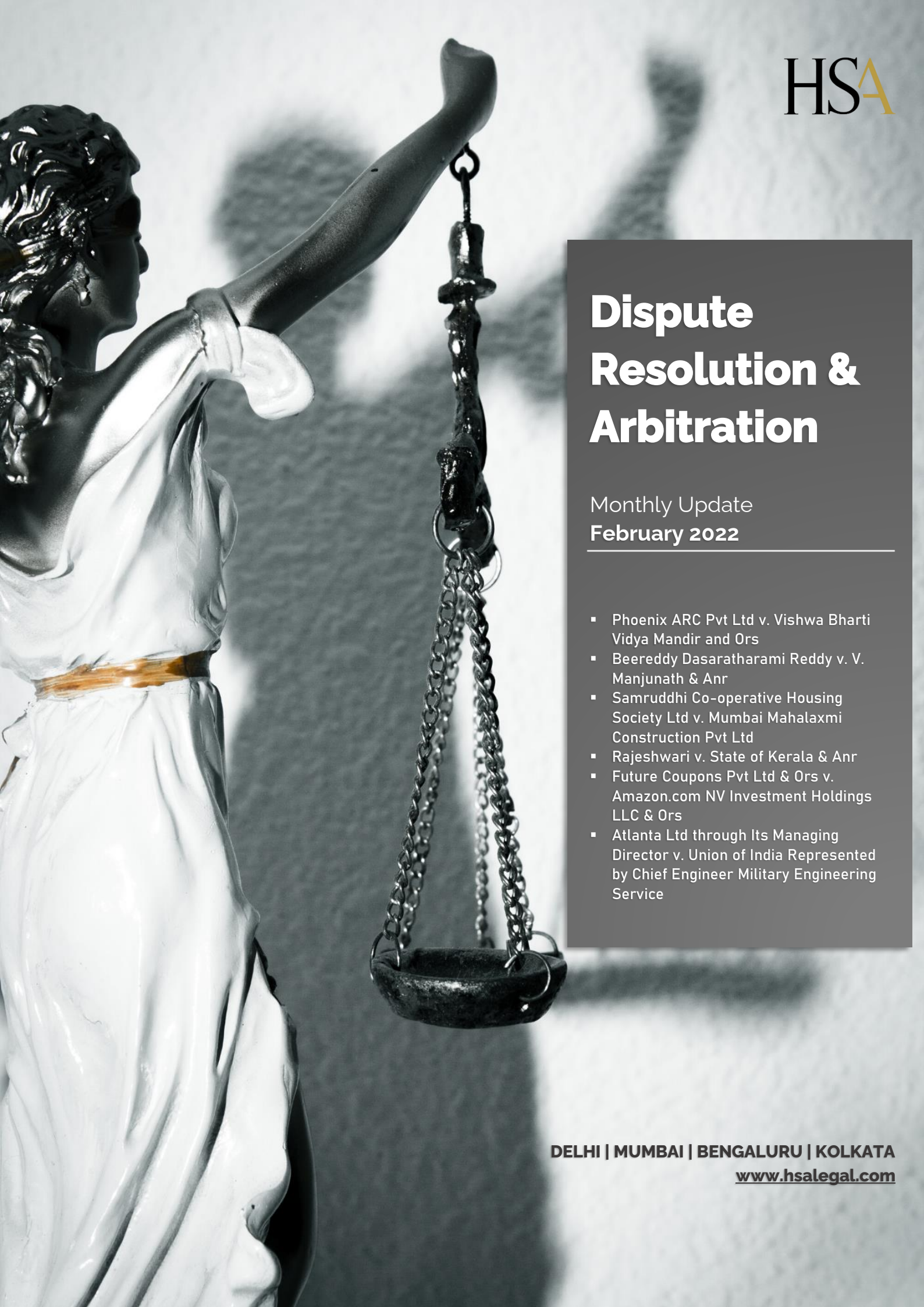

HSA

Dispute Resolution & Arbitration

Monthly Update

February 2022

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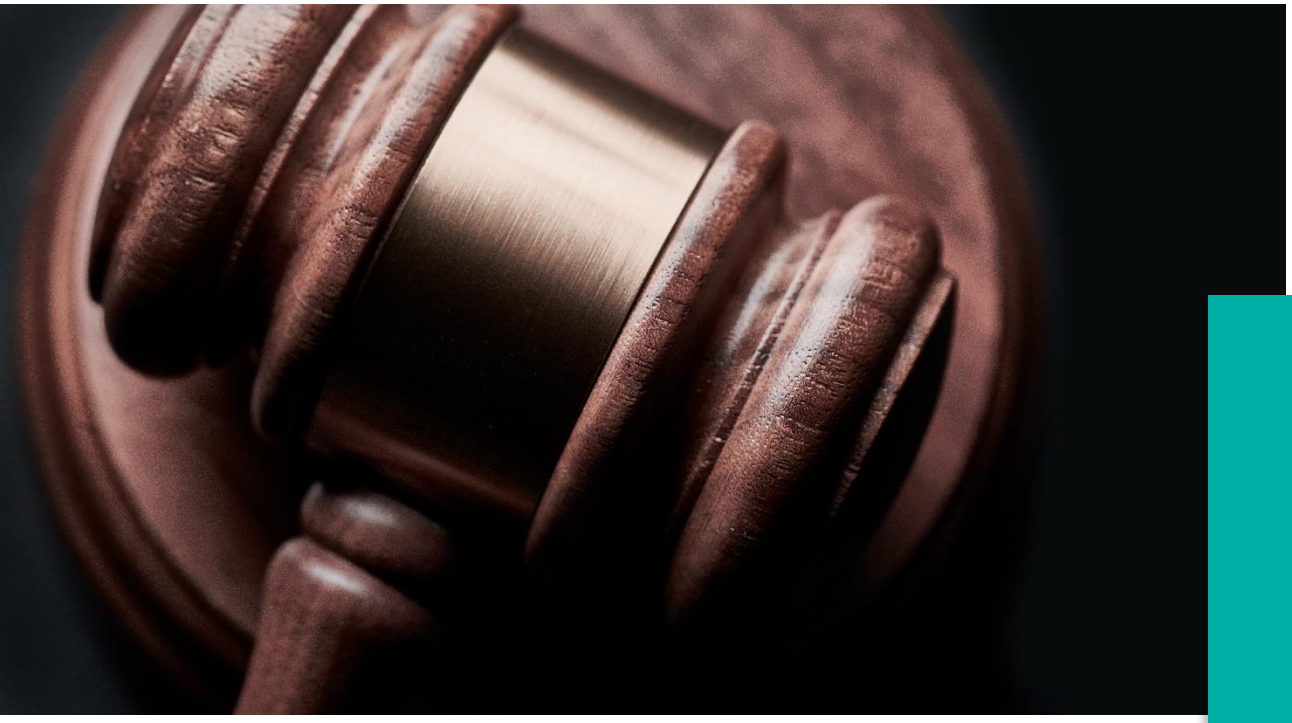
DISPUTE RESOLUTION AND ARBITRATION UPDATE



Contributors

Faranaaz Karbhari
Counsel

Kshitiz Khera
Associate Partner

Rahul P Jain
Associate Counsel

Mahafrin Mehta
Senior Associate

Khushboo Rupani
Senior Associate

Akriti Shikha
Associate

Aasiya Khan
Associate

Aditi Soni
Associate

Phoenix ARC Pvt Ltd v. Vishwa Bharti Vidya Mandir and Ors

Civil Appeal Nos. 257-259 of 2022

Background facts

- Vishwa Bharati Vidya Mandir, a Society registered under the Karnataka Societies Registration Act, 1960, and one of its educational institutions, St. Ann's Education Society (**Respondents**), availed credit facilities to the tune of INR 105.6 crore and INR 20 crore respectively from Saraswat Co-operative Bank Ltd (**Bank**). The Respondents created an equitable mortgage by depositing title deeds over the immovable properties with respect to the mortgaged properties.
- Owing to the defaults committed by the Respondents in repayment of outstanding dues, in the month of April, 2013 the accounts of Respondents were classified as a Non-performing Asset (**NPA**), subsequent to which the Bank issued a notice dated June 1, 2013 under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (**Act**).
- Thereafter, vide an Assignment Agreement dated March 28, 2014, the bank assigned the NPA account of the Respondents in favor of Phoenix ARC Pvt Ltd (**Appellant**). In accordance with the Assignment, the Respondents approached the Appellant with a request for restructuring the repayment of outstanding dues, which was accepted.
- A Letter of Acceptance dated February 27, 2015 was executed between both parties, wherein the borrowers/Respondents acknowledged and admitted the liability to repay the entire outstanding dues. However, the borrowers defaulted and, consequently, the Appellant issued a letter dated August 13, 2015 to the Respondents, whereby the Appellant proposed to take possession of the mortgaged properties of the Respondents, after expiry of 15 days. This letter was strongly opposed by the Respondents on the ground that the letter issued by the Appellant was a possession notice under Section 13(4) of the Act, which was in violation of Rule 8(1) of the Security Interest (Enforcement) Rules, 2002 and subsequently, filed Writ Petitions under Article 226 of the Constitution, in the Karnataka High Court.
- The High Court passed an *ex-parte ad-interim* Order directing status quo to be maintained with regard to possession of the mortgaged properties, subject to the Respondents making a

payment of INR 1 crore to the Appellant (in total INR 3 crore, in view of the subsequent orders passed by the High Court while extending the *ex-parte ad-interim* Order).

- Aggrieved by the Impugned Orders and entertainment of Writ Petitions by the High Court, the Appellant filed the present Appeal in the Supreme Court of India (**SC**).

Issue at hand?

- Whether the High Court was justified in entertaining the Writ Petitions against the communication dated August 13, 2015 and to pass the *ex-parte ad interim* Order, virtually stalling/restricting the proceedings under the Act by the Appellant?

Decision of the Court

- SC took note of the glaring fact that as per the Appellant, approximately INR 117 crore was the amount due and payable to the Bank; however, the High Court directed the Respondents to deposit a sum of INR 3 crore only.
- Following that, SC referred to its decision in *United Bank of India v. Satyawati Tondon & Ors*[1] whereby it was observed that the remedy available to an aggrieved person by way of Appeal under Section 17 of the Act, against an action taken under Section 13(4) or Section 14, would render speedy and effective results. Furthermore, SC also raised question on the maintainability of a Writ Petition under Article 226 of the Constitution of India when such effective remedy was available for matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions.
- Also, the Court underpinned its decision in *City and Industrial Development Corpn v. Dosu Aardeshir Bhiwandiwala*[2] that the Court, while exercising its jurisdiction under Article 226, is under an obligation to examine whether the Petitioner had any alternative or effective remedy for the resolution of the dispute. In addition, SC considered the principle laid down in *Kanaiyalal Lalchand Sachdev and Ors v. State of Maharashtra & Ors*[3] wherein the Order of the Hon'ble Court dismissed the Writ Petition on the ground that if an efficacious remedy was available under Section 17 of the Act, the relief under Articles 226/227 of the Constitution of India is not available to any aggrieved person.
- In light of the statutory remedy available under Section 17 of the Act and the law laid down by the Court in the above cases, SC strongly opined that the High Court had erred in entertaining the Writ Petition against the communication dated August 13, 2015. It clarified that if proceedings are initiated under the Act and/or any proposed action is to be taken and the borrower is discontented by such actions, then borrower has to avail the remedy under the Act and no Writ Petition would lie and/or is maintainable and/or entertainable.
- With reference to the submission of the Respondents that in exercise of the powers under Article 226 of the Constitution, this Court may not interfere with the interim/interlocutory orders, SC dismissed it, on the strength of its judgement in *State Bank of Travancore & Anr v. Mathew K.C.*[4] and expressed that '*filing of the Writ Petition by the borrowers before the High Court under Article 226 of the Constitution of India is an abuse of process of the Court*'.
- In view of the aforementioned reasons, SC allowed the Appeal, dismissed the Writ Petition, and vacated the *ex-parte ad-interim* Order.

HSA
Viewpoint

The SC's decision is noteworthy since it solidifies the principles that when an effective remedy is available with a Petitioner, under the SARFAESI Act, then no Writ Petition would be maintainable by the High Court. The same is now settled and beyond any cavil. The SC has captured the true essence of the Act by restricting the borrowers from roadblocking the attempts of the Bank/ARC and compelling the borrowers to invoke the statutory remedy under Section 17 of the Act, instead of cleverly seeking protection under Article 226/227 of the Constitution.

Beereddy Dasaratharami Reddy v. V. Manjunath & Anr

Civil Appeal No. 7037 of 2021 (Arising Out of Special Leave Petition (Civil) No. 13853 of 2021)

Background facts

- K. Veluswamy, Karta of the joint Hindu family, consisting of his wife and son, executed an agreement to sell the Suit property with Beereddy Dasaratharami Reddy, (**Appellant**).
- Consequently, the Appellant instituted the Suit for specific performance of the sale agreement impleading both K. Veluswamy, (**Second Respondent**) and V. Manjunath, (**First Respondent)**, son of the Second Respondent. In pursuance of the same, the Senior Civil Judge, Hiriyur Taluk, Karnataka (**Trial Court**), passed a Decree in favor of the Appellant.
- This decision did not sit well with the First Respondent, and he filed a regular First Appeal before the Karnataka High Court. In pursuance of this, the High Court set aside the Decree of the Trial

[1] (2010) 8 SCC 110
[2] (2009) 1 SCC 168
[3] (2011) 2 SCC 782
[4] (2018) 3 SCC 85

Court, on the premise that the agreement to sell was un-enforceable, as the Suit property belongs to the joint Hindu family and therefore, the sale agreement cannot be executed by the Second Respondent without the signature of the First Respondent.

- Aggrieved by this, the Appellant challenged the Order of the High Court by filing an Appeal in the Supreme Court of India (**SC**).

Issue at hand?

- Whether the Second Respondent, as a Karta, had legal authority to execute agreement to sell for sale of the Suit land?

Decision of the Court

- SC noted that the Respondents had openly professed that they agreed to sell the Suit property because they were in need of funds to meet domestic necessities, and, moreover, the same had been recorded in the sale deed, which distinctly establishes the legal necessity.
- SC expressed that right of the Karta to execute a sale deed of a joint Hindu family property is a well-settled law and recapitulated the principles laid by it in *Sri Narayan Bal and Others v. Sridhar Sutar and Others*[5] wherein it was conclusively determined that a Coparcener, who had right to claim a share in the joint Hindu family estate, could not solicit for an injunction against the Karta, to restrain him from dealing with or parting with the joint Hindu family property, and the right to challenge such sale accrues only after the alienation, if the same was not for legal necessity or for betterment of the estate. In this vein, SC opined that the Karta enjoyed outspread choice in his decision over the existence of legal necessity and as to what steps should be taken to accomplish such necessity.
- Thereafter, SC pointed that there were no particular elements to prove the existence of legal necessity and the existence of legal necessity depended upon facts of each case. To throw light on concept of legal necessity, the SC referred to its judgement in *Kehar Singh (D) through Legal Representatives and Ors v. Nachittar Kaur and Ors*[6] and advanced that once the existence of a legal necessity was built, then no Coparcener had a right to challenge the sale, effected by the Karta of the joint Hindu family.
- In view of the aforesaid, the SC explicitly stated that the Second Respondent, being the Karta, was entitled to execute sale deed of the Suit property and therefore, the absence of the First Respondent's signature on the agreement was immaterial.
- In light of the above, the SC restored the judgment of the Trial Court and accordingly, directed the Respondents to handover the physical possession of the Suit property to the Appellant along with the execution of the sale deed.

HSA
Viewpoint

SC's decision that when a Karta alienated a joint Hindu family property for value, either for legal necessity or benefit of the estate, it would bound the interest of all undivided members of the family, aligns with the settled legal position on the rights of the Karta and further solidifies the law laid down in *Sri Narayan Bal and Others v. Sridhar Sutar and Others*. SC's decision bars the coparceners of the joint Hindu family from raising unfounded claims regarding alienation of the family property by the Karta, especially when the existence of the legal necessity is crystal clear.

Samruddhi Co-operative Housing Society Ltd v. Mumbai Mahalaxmi Construction Pvt Ltd

Civil Appeal No. 4000 of 2019

Background facts

- The members of Samruddhi Co-operative Housing Society Ltd. (**Appellant**) were granted possession of the flats constructed by Mumbai Mahalaxmi Construction Pvt Ltd (**Respondent**). However, the Respondent failed to obtain Occupation Certificate (**OC**) from the municipal authorities, as a result of which the members of the Appellant had to pay excess taxes and charges for electricity and water connections.
- On July 08, 1998, the Appellant instituted a consumer complaint before the State Consumer Disputes Redressal Commission Mumbai (**SCDRC**) seeking a direction to compel obtaining of the OC by the Respondent. Thereafter, a one-time settlement offer was made by the Respondent in 2014 which was refused by the Appellant, being lower than the amount owed by the Respondent.
- Vide Order dated August 20, 2014, the SCDRC directed the Respondent to obtain an OC within 4 months from the date of the Order and pay INR 1 lakh towards reimbursement of extra water charges paid.
- On December 28, 2015, the Appellant sent a legal notice to the Respondent demanding payment of outstanding dues to the extent of INR 3.5 crore. However, the Respondent failed to comply with the demand. Thereafter, the Appellant filed an execution petition of the Order of SCDRC.

[5] (1996) 8 SCC 54
[6] (2018) 14 SCC 445

- Being aggrieved by the failure of Respondent to obtain the OC, the Appellant filed a complaint before the National Consumer Disputes Redressal Commission (**NCDRC**) for refund of the excess charges and taxes paid to the tune of INR 2.6 crore and further damages for mental agony and inconvenience, as its members had to pay a 25% higher amount on account of the property tax and an additional 50% towards the water charges, due to the deficiency of services of the Respondent on account of the failure of the builder to obtain the OC.
- Vide Order dated December 03, 2018 (**Impugned Order**), the NCDRC dismissed the complaint on the grounds that it was barred by limitation, and it was not maintainable as Respondent was not the service provider. NCDRC also held that the Appellant would not fall under the definition of 'consumer' under Section 2(1)(d) of the Consumer Protection Act, 1986 (**CP Act**).
- Aggrieved by the Impugned Order, the Appellant filed an Appeal before the Supreme Court (**SC**).

Issues at hand?

- Whether the complaint filed by the Appellant before the NCDRC was barred by limitation?
- Whether the complaint filed by the Appellant is valid and maintainable on account of the Appellant being termed as a 'consumer' and Respondent as a 'service provider'?

Decision of the Court

- SC noted that Section 24A of the CP Act provides for a limitation period of two years from the date on which the cause of action has arisen for lodging a complaint. SC relied on its various judgements like *Balakrishna Savalram Pujari Waghmare v. Shree Dhyaneshwar Maharaj Sansthan*[7], *CWT v. Suresh Seth*[8] and *M. Siddiq v. Suresh Das*[9] and discussed on when does a continuous cause of action arises and what is a continuous wrong.
- The Court observed that a continuing wrong occurs when a party continuously breaches an obligation imposed by law or agreement and the continuing wrong in the instant case is the failure to obtain the OC.
- SC then referred to Section 3 and 6 of Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (**MOFA**) and observed that there was an obligation on the Respondent to provide the OC and pay for the relevant charges till the certificate has been provided.
- The Court also observed that rejection of the complaint as being barred by limitation, when the demand for higher taxes is made repeatedly due to the lack of an OC, is a narrow view which is not in consonance with the welfare objective of the CP Act. Further, the Court also observed that there has been a direct impact on the members of the Appellant in terms of the payment of higher taxes and water charges to the municipal authority.
- Accordingly, SC held that failure to obtain OC is a continuous failure and therefore, a breach of the obligations imposed on the Respondent under the MOFA amounts to a continuing wrong and therefore, the complaint is not barred by limitation.
- With respect to the maintainability issue, SC relied on the decisions passed in *Wing Commander Arifur Rahman Khan & Others v. DLF Southern Homes Pvt Ltd & Ors*[10] and *Pioneer Urban Land Infrastructure Ltd v. Govindan Raghavan*[11], wherein it was held that the failure to obtain OC or abide by contractual obligations amounts to a deficiency in service. Accordingly, SC opined that the failure of the Respondent to obtain the OC is a deficiency in service for which the Respondent is liable.
- Further, SC noted that Section 2(1)(d) of the CP Act defines a 'consumer' as a person that avails of any service for a consideration and 'deficiency' is defined under Section 2(1)(g) of the CP Act as the shortcoming or inadequacy in the quality of service. Accordingly, SC held that the members of the Appellant are well within their rights as 'consumers' to pray for compensation as a recompense for the consequent liability such as payment of higher taxes and water charges by the owners, arising from the lack of OC.
- In view of the above, SC held the Appellant's complaint is maintainable and directed the NCDRC to adjudicate on the merits of the disputes in line with the instant judgement within 3 months from the date of the instant judgement.

HSA
Viewpoint

This judgment makes it crystal clear that the failure of a real estate developer to obtain an Occupation Certificate is a 'deficiency in service' under the CP Act and the home-buyers are within their rights as 'consumers' to demand compensation for high charges incurred by them.

In our opinion, this decision essentially brings a major relief to numerous co-operative housing societies who are yet to receive the Occupation Certificates for their buildings since this ruling explicitly defines a society as a 'consumer'. This ruling will go a long way in protecting the highly neglected rights of the consumers under the CP Act and will hold the builders accountable for their deficiency in services.

[7] AIR 1959 SC 798
[8] (1981) 2 SCC 790
[9] (2020) 1 SCC 1
[10] (2020) 16 SCC 512
[11] (2019) 5 SCC 725

Rajeshwari v. State of Kerala & Anr

Criminal Misc. Case No.6699 of 2021

Background facts

- In this case, Ms. Rajeshwari, (**Petitioner**), was accused of an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (**Act**) by Ms. Usha Poulose, (**Complainant**). Subsequently, the Judicial First-Class Magistrate Court (**Trial Court**), convicted and sentenced the Petitioner to undergo simple imprisonment for a period of 1 year and to pay a fine, with a default clause of 3 months.
- Aggrieved by this, the Petitioner filed an Appeal in the Additional Sessions Court, but it was dismissed.
- Discontented by this, the Petitioner filed a Criminal Revision Petition in the Kerela High Court, as a result of which the conviction of the Petitioner was maintained but the sentence of simple imprisonment for 1 year was modified to a sentence to deposit fine in the Trial Court within 6 months, and, in case of default, to undergo simple imprisonment for a period of 3 months. Subsequently, the Petitioner paid the entire amount of fine to the Complainant.
- Thereafter, the Petitioner filed a Petition in the Trial Court to recall the non-bailable warrant pending against her and close the case, but the Trial Court dismissed the Petition on the premise that the Petitioner had failed to comply with the Order of the High Court which clearly directed to deposit the fine in Trial Court only.
- Indignant by this, the Petitioner challenged the Order of the Trial Court by filing a Criminal Misc. Application in the High Court.

Issue at hand?

- Whether the Trial Court erred in dismissing the Petition filed by the Petitioner to recall the warrant of arrest and close the case?

Decision of the Court

- At the outset, the High Court noted that the Complainant had filed an Affidavit wherein it was confirmed that entire amount of fine had been paid by the Petitioner and the receipt of acknowledgement of the payment was issued by her to that effect.
- Therefore, the High Court made a reference to the law laid down in *Beena v. Balakrishnan*[12] which dealt with the case of present nature, wherein it instructed the learned Magistrate that as per the final Order disposing of the Revision Petition, if the Petitioner successfully pays the amount of fine directly to the Complainant and the Complainant therein files a statement within 1 month from that day through his Counsel recording the receipt of amount of fine, ordered to be paid by the Petitioner therein, then the learned Magistrate must accept that as satisfactory obedience of the direction contained in the Orders disposing of the Revision Petitions and make necessary entries in the fine register as if the fine was realized and paid to the Complainant therein, and close the matter accordingly.
- Furthermore, the High Court discussed that the abovementioned decision was subsequently solidified by this Court in *Sivankutty v. John Thomas*[13], and it was further clarified that if the Court permitted the Petitioner to directly make payment of fine to the Complainant therein, then the Magistrate could not force the Petitioner to deposit the fine in Court only.
- On the strength of the aforementioned two judgements, the High Court arrived at the conclusion that there was substantial compliance of the direction issued by this Court in the Revision Petition as the entire amount of fine was received by the Complainant.
- In view of this, the High Court directed the Court below to make requisite entry in the fine register, recording the factum of settlement between the parties, as if the fine was realized and paid to the Complainant.
- In light of the above, the High Court answered the issue in affirmative and in favor of the Petitioner.

HSA
Viewpoint

The Court's decision that if the accused, in a cheque bounce case under Section 138 of the Act, had directly paid the amount of fine to the Complainant instead of depositing it in Court first, then that would be considered as sufficient compliance to the final Order disposing of the Revision Petition, is remarkable in replacing all the confusion with clarity about the remission of fine whether the Order records payment of fine to be made directly to the Complainant or not. The Hon'ble Court has drawn the most logical conclusion by elucidating the direct payment of fine to the Complainant as abundant observance of the Order instructing to pay fine, as it nevertheless fulfils the aim of reimbursing the Complainant and restoring him to its original position.

[12] 2010 (2) KLT 1017
[13] 2012(4) KLT 21

Future Coupons Pvt Ltd & Ors v. Amazon.com NV Investment Holdings LLC & Ors

Civil Appeal No 859 – 860 of 2022 Arising out of SLP (C) No 13547-13548 of 2021

Background facts

- The Emergency Arbitrator by order dated October 25, 2020 has restrained Future Retail Ltd (**FRL**) from going forward with its deal with Reliance Industries (**Reliance**) and injuncted FRL from taking any steps in furtherance of the Scheme of Arrangement with Reliance.
- The Arbitral Tribunal hearing the FRL - Amazon dispute enforced the Emergency Arbitrator's Order dated October 21, 2021 and dismissed FRL's plea to vacate the order passed by the Emergency Arbitrator.
- Furthermore, a single-judge bench of Delhi High Court on March 18, 2021 had directed for attachment of property of Future group companies and their promoters and imposed a cost of INR 20 lakhs on FRL and its promoters for raising an untenable plea of nullity against the award. The High Court also held that the Emergency Arbitrator had rightly invoked the 'Group of Company' doctrine in relation to the Future Group companies.
- The High Court by way of another order refused to set aside the Arbitral Tribunal's decision to enforce the Emergency Arbitrator's Award and refused to vacate the same.
- FRL filed two Special Leave Petitions against:
  - High Court's single bench order directing attachment of assets of Future Group companies and its promoters for failure to comply with the Emergency Award
  - High Court's order which refused to stay the Singapore Arbitration Tribunal's decision to enforce the Emergency Arbitrator's Award
- FRL contended that its attempt to seek the necessary approvals from CCI and SEBI were in line with the directions passed in a previous judgment against Amazon. FRL also contended that the SC had on February 22, 2021 passed an interim order permitting proceedings before the NCLT to proceed without passing final order.
- FRL submitted that the enforcement of the order of the Emergency Arbitrator must now come to an end, as it is the order of the Arbitral Tribunal that has to be enforced, and it must, of necessity, be subject to any orders that may be made in the Appeal under Section 37 and/or any orders that may be passed by the SC.
- It was argued on behalf of Amazon that FRL and Future Coupons Pvt Ltd (**FCPL**) have repeatedly violated the injunction orders passed by the Emergency Arbitrator and hence, they cannot seek reliefs from the Court.
- Furthermore, it was argued that the Arbitral Tribunal pronounced its order on October 21, 2021 rejecting FRL's application for vacation of Emergency Arbitrator's order. Therefore, until the order of the Arbitral Tribunal is suspended in appeal under Section 37 of the Arbitration and Conciliation Act, 1996, that order must be complied with.

Issues at hand?

- Procedural irregularities by the Single Bench
- Civil contempt can only be made out when there has been willful disobedience
- Courts should be cautious while making observation on the merits of the case
- Settling questions of law

Decision of the Court

- Supreme Court held as follows for each issue:
  - **Issue 1:**
    - SC observed that FRL and FCPL were not granted sufficient time or opportunity to file their counter or raise their defense and were allowed to file a brief note of submission 24 hours prior to when the orders were passed. According to the SC serious procedural errors were committed by the Single Judge of the Delhi High Court.
    - SC also held that 'natural justice' is an important facet of a judicial review and providing effective natural justice to affected parties, before a decision is taken, is necessary to maintain the rule of law.
  - **Issue 2:**
    - SC observed that contempt of a civil nature can be made out under Order 39 Rule 2A CPC only when there has been 'willful disobedience' and not mere 'disobedience.'

  - According to the SC, the allegation of willful disobedience being in the nature of criminal liability, the same has to be proved to the satisfaction of the court that the disobedience was not mere 'disobedience' but 'willful' and 'conscious.'
  - Accordingly, the SC set aside the punitive directions issued by the Single Judge against the Future Group companies and its promoters stating that the pre-condition of 'sufficient mental element for willful disobedience' is not satisfied.
- **Issue 3:**
  - SC observed that the interim order enforcing the Emergency Award adopted a standard beyond 'prima facie view' as required under law. Therefore, the Supreme Court held that it is expected of Courts to be cautious while making observations on the merits of the case, which would inevitably influence the Arbitral Tribunals hearing the matters on merit.
- **Issue 4:**
  - With regard to the Delhi High Court's Order refusing to set aside the Emergency Arbitrator's award, the SC held that certain important questions of law concerning the effect of the award if an Emergency Arbitrator and the jurisdiction of an Arbitral Tribunal qua such awards arise in the present matter.
  - Accordingly, these matters need to be remitted back for adjudication on its own merits.

- The Apex Court also clarified that the order passed imposed no bar on the High Court to adjudicate the issue concerning legality of the order of the Arbitral Tribunal in relation to vacation application filed by FRL. It was also stated that the adjudication of applications under Section 37(2) of the Arbitration and Conciliation Act, 1996, filed by FRL before the Delhi High Court are distinct from the earlier appeals filed before the Supreme Court.

HSA
Viewpoint

SC has dealt with certain important questions of law concerning the effect and enforceability of an award passed by an Emergency Arbitrator, and the jurisdiction of the Arbitral Tribunal qua such awards. This decision of the SC is in line with the recommendations given under the 246th Law Commission Report in relation to Emergency Arbitrations. While it remains to be seen what the High Court decides on the merits of the matter, the SC's observation/direction to the courts to be cautious while making observation of the merits of a case would ensure minimal to no influence on the Arbitral Tribunal hearing the matter on merits.

Atlanta Ltd through Its Managing Director v. Union of India Represented by Chief Engineer Military Engineering Service

2022 SCC OnLine SC 49; Civil Appeal No. 1533 of 2017

Background facts

- On November 16, 1988, a construction company, Atlanta Ltd (**Atlanta/Appellant**) entered into a contract with the Union of India (**UoI/Respondent**) to construct a runway and for allied work at the Naval Air Station, Arakonam for a consideration of INR 19,58,94,190. The term for completion was stipulated in the contract to be 21 months from the date of commencement.
- As per the Respondent, the site was handed over on November 24, 1988 and therefore the date of completion was August 23, 1990, whereas the Appellant claimed that due to water-logging the work could commence only on January 01, 1989. Extension was sought and granted by the Respondent thrice, first till December 31, 1990, then till June 30, 1991 and finally till March 31, 1992. The Appellant claimed that by mid-March it had completed substantial construction of the runway and the taxi track.
- For inauguration purposes on March 11, 1992, the site was handed over to the Respondent. Later, the Appellant's request for passes for entry of the staff, operators and labourers was not granted. On April 02, 1992, it was intimated that the contract was terminated. Therefore, the Appellant invoked the arbitration clause, and a sole arbitrator was appointed.
- Upon consideration of the claims and counterclaims the Arbitrator awarded INR 25,96,87,442.89 to the Appellant including interest up to March 31, 1999. Directions were also passed against the Respondent to pay future interest at the rate of 18% p.a. on the principal amount.
- The Respondent was awarded INR 1,42,255 along with future interest. Dissatisfied with the award, the Respondent filed a petition under Section 30 read with Section 33 of the Arbitration Act, 1940, which was rejected by the Single Judge and a Decree was passed. On appeal, the Division Bench set aside the amount awarded in favor of the Appellant towards idle hire charges and the value of the tools and machineries.
- It was submitted on behalf of the Appellant that:
  - The Division Bench had erred in re-appreciating evidence, which was extensively examined by the Arbitrator and the Single Judge considering that the scope of inference is limited

under the Arbitration Act, 1940 as held by the Supreme Court in *NTPC Ltd v. Deconar Services Pvt Ltd*[14].
  - The Division Bench had exceeded its jurisdiction in supplanting the conclusions reached by the Arbitrator with its own opinion.
- Counsel on behalf of the Respondent submitted that:
  - Clauses 7, 11, 54 and 70 of the contract, which pertain to reasonableness of extension of time and validity of termination of contract were 'excepted matters'.
  - Arbitrator had gone beyond the reference to allow claim for idling cost of plant and machinery in favor of the Appellant which were covered under 'excepted matters' by virtue of Clauses 54 and 70.
- It was pointed out that in a separate proceeding before the High Court, the Appellant was permitted to lift its material from the site, but it chose not to do so. Therefore, it was contended that the award was patently perverse.
- Relying on *Food Corporation of India v. Sreekanth Transport*[15] , *Grid Corporation of Orissa Ltd and Anr v. Balasore Technical School*[16] and *General Manager, Northern Railways and Anr v. Sarvesh Chopra*[17], the Counsel argued that the Arbitrator could not have adjudicated the 'excepted matters'.

Issue at hand?

- Whether Court has the power to reassess and appreciate evidence on arbitral record such as:
  - The reasonableness of the extension of time and validity of the termination of the contract on the part of the Respondent.
  - The validity of grant of the Appellant's claim in respect of idle hire charges at the site from April 02, 1992 to December 23, 1995 along with interest from December 24, 1995 to December 31,1999 and the value of the tools and machineries.

Decision of the Court

- Citing *Kwality Manufacturing Corporation v. Central Warehousing Corporation*[18], *Arosan Enterprises Ltd. v. Union of India and Anr*[19] and *Municipal Corporation of Delhi v. Jagan Nath Ashok Kumar and Anr*[20], the Court noted that the scope of the provisions is indeed limited, and the Court ought not to reassess or appreciate evidence or examine sufficiency of evidence. Only a patent error or misconduct of the Arbitrator or the proceedings could justify the Court's interference. The Court referred to *State of Rajasthan v. Puri Construction Co Ltd and Anr*[21] to observe that an award cannot be challenged on the ground that the arbitrator had drawn his own conclusion or had failed to appreciate facts.
- SC stated that the conclusion drawn by Appellate Court is manifestly erroneous and flies in the face of the settled legal position that the Arbitrator is the final arbiter of the disputes between the parties, and it is not open to a party to challenge the Award on the ground that he has drawn his own conclusions or has failed to appreciate certain facts. It is beyond the jurisdiction of the Appellate Court to assign to itself, the task of construing the terms and conditions of the contract and its provisions and take a view on certain amounts awarded in favor of a party. It was beyond the domain of the Appellate Court to have examined the reasonableness of the said reasons by reappreciating the evidence to arrive at a different conclusion.
- The Court further observed that the Clause referred to by Respondent counsel as the 'excepted matters' were taken into consideration, discussed, and thereafter declared by the Arbitrator as inapplicable to the facts and circumstances. The submission with respect to the Arbitrator having misconducted himself was also rejected by the SC.
- The Court set aside the impugned judgment dated July 20, 2010 passed by the Division Bench of the High Court while restoring the judgment dated June 19, 2009 passed by the learned Single Judge and upholding the decree granted in favor of the Appellant in terms of the Award along with interest.

HSA
Viewpoint

The Apex Court reaffirmed the settled legal position that courts should be reserved in re-appreciating evidence on record, but had gone further to hold that such reservation extends to interpretation of contractual provisions and certain facts alleged to have been disregarded by the Arbitral Tribunal since this transgresses another area of legal sentiment that an arbitrator's failure to consider the record placed before him leads to the inescapable conclusion of perversity in the award. This, though, depends on the facts of each case.

[14] (2021) SCC OnLine SC 498
[15] (1999) 4 SCC 491
[16] (2000) 9 SCC 552
[17] (2002) 4 SCC 45
[18] (2009) 5 SCC 142
[19] (1999) 9 SCC 449
[20] (1987) 4 SCC 497
[21] (1994) 6 SCC 485

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CONTACT US

www.hsalegal.com

mail@hsalegal.com

HSA Advocates

PAN INDIA PRESENCE

New Delhi
Email: newdelhi@hsalegal.com

Mumbai
Email: mumbai@hsalegal.com

Bengaluru
Email: bengaluru@hsalegal.com

Kolkata
Email: kolkata@hsalegal.com