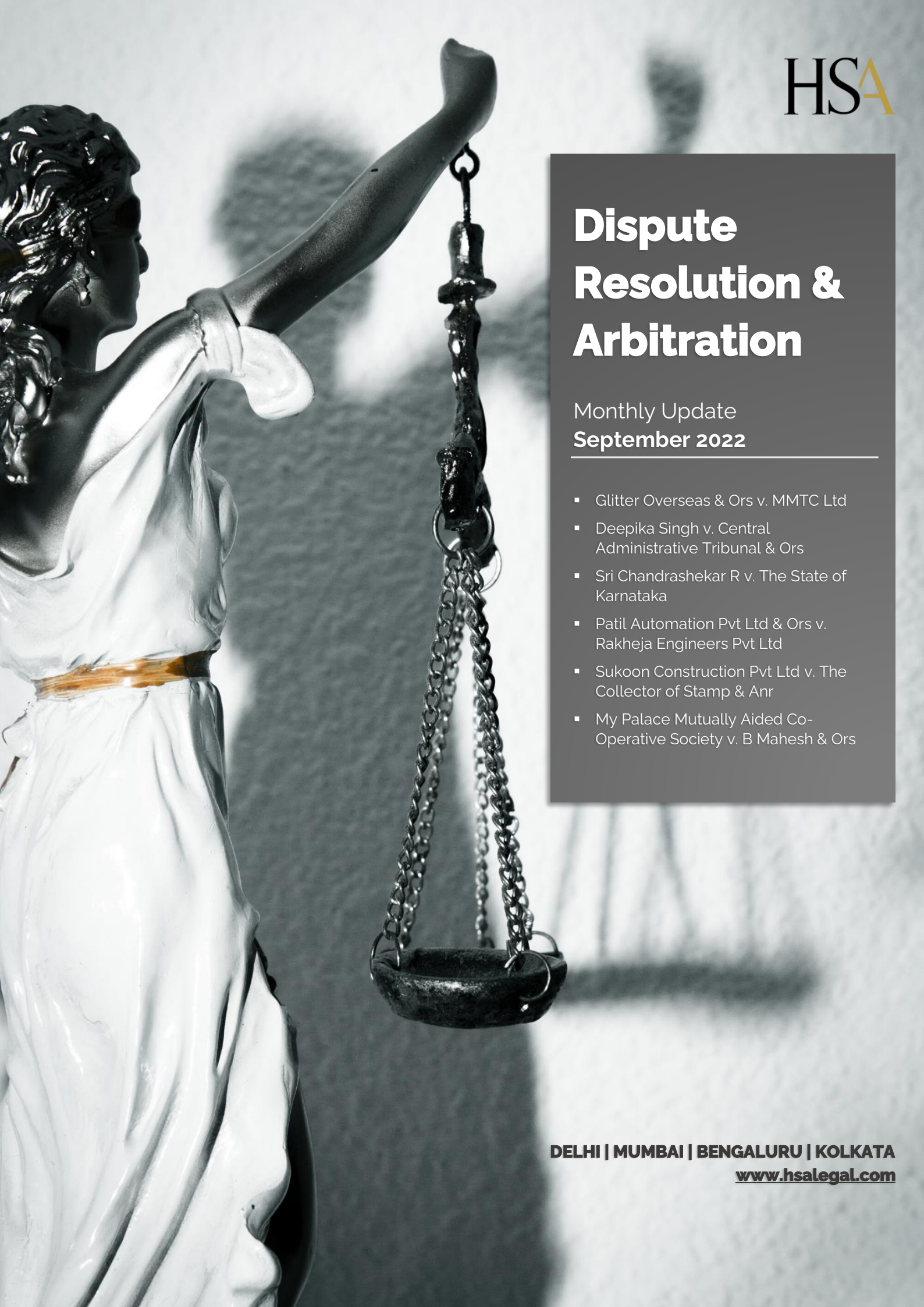

HSA

Dispute Resolution & Arbitration

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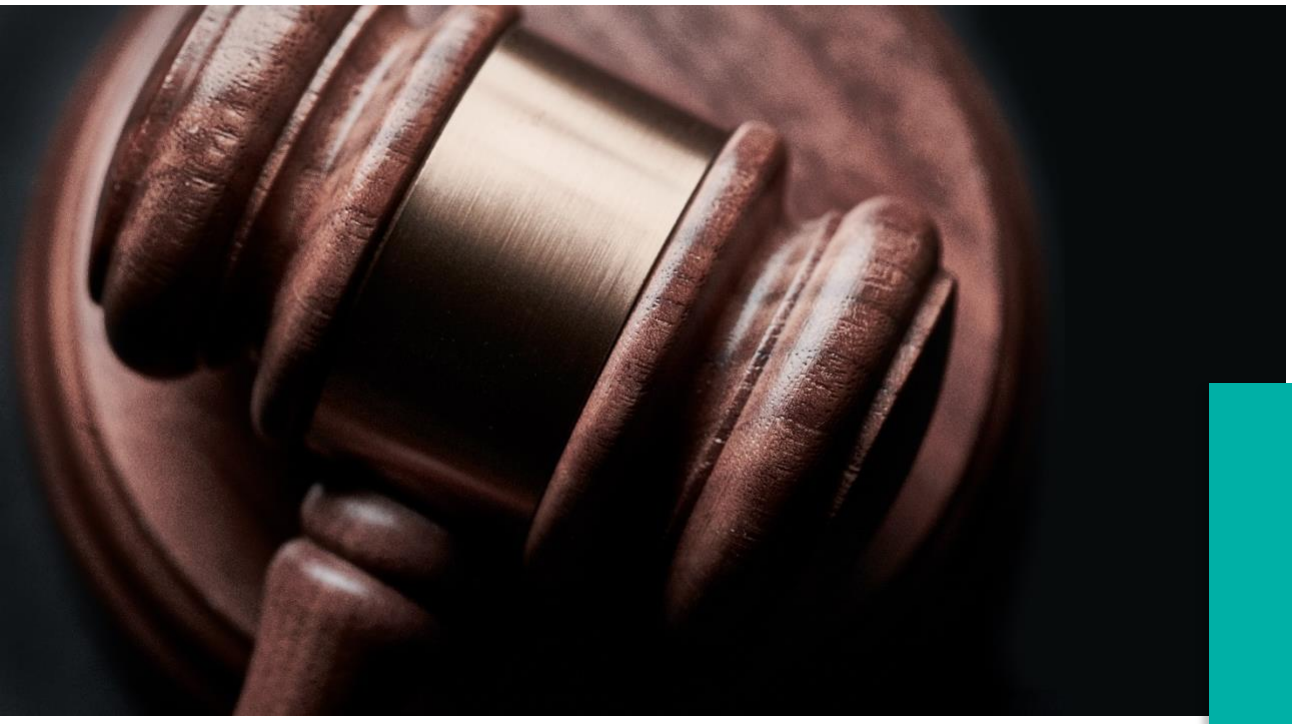
DISPUTE RESOLUTION AND ARBITRATION UPDATE



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Glitter Overseas & Ors v. MMTC Ltd

Delhi High Court | OMP (COMM) 487/2020 & IA No. 8758/2020

Background facts

- On January 17, 1992, a Hypothecation Agreement was executed between Glitter Overseas & others (**Petitioners**) and MMTC Ltd (**Respondent**) in respect of which the Respondent agreed to extend financial facility up to a limit of INR 25 lakhs to the Petitioners, carrying interest at the rate of 15.5% per annum. In consideration of the Hypothecation Agreement, on even date, Petitioner Nos. 2 and 3 signed and executed a Demand Promissory Note of a sum of INR 25 lakh.
- In furtherance of Clause 20 of the Hypothecation Agreement, an Export Agreement was executed between the parties in terms of which the Petitioners agreed to export goods worth INR 20 crore through the Respondent over a period of three years. It is pertinent to note that Clause 3 of the Export Agreement specified that to effect payment against delivery of the goods, the foreign buyers must open a Letter of Credit in the name of the Respondent. Also, in terms of Clause 6 of the Export Agreement, the parties agreed that the exports which were not covered under the Letters of Credit, would be covered against an ECGC comprehensive policy by the Respondent, at the cost of Petitioners.
- Thereafter, disputes arose between the parties on account of shortfall in receipt of payment of twelve (12) invoices in respect of certain transactions during the years 1993-1996. It was the contention of the Respondent that as the foreign buyers had accepted the delivery of the jewelry but failed to make payment, the Petitioners were liable to the extent thereto. Furthermore, the Respondent was aggrieved by the seizure of 6 kg of gold supplied by it to the Petitioners by the Indian Customs Authorities as the Petitioners failed to manufacture and export the jewelry within 120 days. In addition to this, the Respondent also claimed an amount for deferring the interest in respect of certain consignments.
- Subsequently, the Respondent invoked the arbitration clause as contained in the Export Agreement by raising a claim of INR 1.70 crore along with interest at the rate of 25% per annum.
- Thereafter, an Arbitral Tribunal was constituted to adjudicate the disputes between the parties; however, the matter continued to be pending before the originally constituted Arbitral Tribunal till the year 2015 without much progress. In the month of July, 2015, MMTC filed a petition under Section 11 of the A&C Act in this Court for appointment of another tribunal. By an order

dated January 18 2018, the Delhi High Court (**High Court**) appointed the learned Sole Arbitrator (**Arbitral Tribunal**) to adjudicate the disputes between the parties.

- As a result, vide the Award dated January 08 2020, the Arbitral Tribunal awarded a sum of INR 1,02,62,076.88 on account of the twelve unpaid invoices, INR 5,98,58,350.74 on account of interest on the aforesaid unpaid invoices, INR 3,21,45,351.43 on account of six kgs of gold confiscated by the Indian Custom Authorities, INR 1,09,73,775.03 on account of deferred payment interest, and INR 20,00,000 on account of costs, in favor of the Respondent. Further, the Arbitral Tribunal awarded pendente lite and future interest at the rate of 12% per annum on the aforesaid amounts (**Award**).
- Aggrieved by the aforesaid Award, the Petitioners filed the present Petition under Section 34 of the Arbitration and Conciliation Act, 1996 in the Delhi High Court.

Issues at hand?

- **Issue 1:** Whether the Impugned Award to the extent that it accepts Respondent's claim for non-receipt/shortfall in receipt of amounts against the invoices, was patently erroneous and vitiated the Impugned Award?
- **Issue 2:** Whether the Arbitral Tribunal had erred in accepting that the Respondent was not responsible for securing an insurance cover from ECGC and this vitiated the Impugned Award?
- **Issue 3:** Whether the Impugned Award was liable to be set aside on the ground that the Arbitral Tribunal had made observations to the effect that Petitioner No. 2 had played an active part in interpolation of the documents, facilitating the collection of the consignment by the foreign buyer?
- **Issue 4:** Whether the interest rate of 24% per annum awarded by the Arbitral Tribunal was to be set aside?
- **Issue 5:** Whether the Arbitral Tribunal had erred in not appreciating that there was any contributory negligence on the part of Respondent which led to confiscation of 6kgs of gold?

Decision of the Court

- **Issue 1:** Having carefully perused the Award, the Court noted that the Sole Arbitral Tribunal while conclusively determining that the Petitioners were fully responsible for the realization of the export proceeds, had taken into consideration the decision of this High Court in ***Muzaffar Shah v. MMTC Ltd***[1] wherein the view taken by the Arbitral Tribunal that the concerned associate was liable for non-realization of the sale proceeds was upheld and the Arbitral Award passed in favor of MMTC was refused to be intervened with. Additionally, the Court also considered the fact that the Appeal against the aforesaid decision was summarily dismissed by the Division Bench of this High Court, in addition to a Special Leave Petition preferred against the said decision, which too was dismissed by the Supreme Court of India. In view of this, the Court advanced that the decision of the Arbitral Tribunal did not suffer from perversity and answered the first issue in negative.
- **Issue 2:** The Court was unimpressed with the contention that as the Arbitral Tribunal passed the Award without following the judicial precedents in ***MMTC Ltd v. New Sialkoti Jewellers***[2] and ***MMTC Ltd v. Chauhan Jewellers & Ors***[3], it was contrary to the public policy and the Impugned Award was liable to be set aside on the said ground. In this vein, the Court highlighted the limited scope of interference available under Section 34 of the Act and reiterated that once the decision of the Arbitral Tribunal was found to be a possible one, the same would warrant no interference thereunder. Furthermore, the Court distinguished that an Application to set aside an Arbitral Award under Section 34 of the Act is not in the nature of a First Appeal against a Decree and thus, the rejection of an Application under Section 34 of the Act could not be interpreted to mean that the Court had adopted the view of the Arbitral Tribunal. In light of this, the Court observed that the view taken by the Arbitral Tribunal was a possible one and, therefore, answered the second issued in negative.
- **Issue 3:** The Court outlined that as no such ground was pleaded by the Respondent and, therefore, there was no occasion for the Petitioners to counter any such allegation, the declaration by the Arbitral Tribunal to the effect that Petitioner No. 2 had played an active part in interpolation/manipulation of documents to enable foreign buyers to take delivery without payment, was irrelevant to the subject dispute before the Arbitral Tribunal. However, the Court expressed that as the Impugned Award was not based on the aforesaid finding, the same was not vitiated on that ground.

HSA
Viewpoint

By concurring with the rationale proposed by the Arbitral Tribunal, the High Court has re-emphasized that a plausible view taken by the Arbitral Tribunal should not be interfered with, simply because a different view from that taken in the Award exists and that there is no room for speculation by Courts in such cases. However, by setting aside the glaring inaccuracies such as levying of interest at the rate of 24%, awarding a sum without furnishing any reason for such quantification and awarding a sum merely on the statement made by the Respondent without comprehending the underlying liability or adjudicating the same, the Court has carved out an exception to ensure that the fountain of justice is not polluted with any unreasonableness and/or perversity.

[1] 2014 SCC OnLine Del 900
[2] (2016) 234 DLT 150
[3] 2017 SCC OnLine Del 7373

- **Issue 4:** The Court noted that the Export Agreement was silent about the rate of interest and, thus, on account of common knowledge that interest rates had moved downwards significantly over the years, the Court set aside the interest awarded by the Arbitral Tribunal at the rate in excess of 12% per annum.
- **Issue 5:** The Court did not find any merit in the contention of the Petitioners that the Respondent could have paid the necessary fines and duties for redeeming the gold, which was confiscated due to failure to export and upheld the decision of the Arbitral Tribunal in this regard. However, the Court remarked that the Arbitral Tribunal merely accepted the amount of INR 3,21,45,351 without furnishing any reason for such quantification, whereas the loss incurred by the Respondent at that material time was only to the extent of INR 31,26,326. Therefore, the Court modified the Impugned Award to the extent it awarded a sum in excess of INR 31,26,326 in respect of the Respondent's claim on account of six kg of gold confiscated by the Custom Authorities.
- **Issue 6:** The Court noted that there was no material on record to indicate as to how the amount on account of deferred payment interest was computed and the Arbitral Tribunal had awarded the said claim merely on the statement made by the Respondent without comprehending the underlying liability or adjudicating the same. In view of this, the Court directed that the Award for a sum of INR 17,07,198 in favor of the Respondent was liable to be set aside.

Deepika Singh v. Central Administrative Tribunal & Ors

Supreme Court of India | Civil Appeal No. 5308 of 2022

Background facts

- Ms. Deepika Singh (**Appellant**), who was working as a nursing officer at the Postgraduate Institute of Medical Education and Research (**PGIMER**) at Chandigarh, got married to Mr. Amir Singh in 2014. Mr. Amir Singh, from his former wife who passed away in 2013 i.e., prior to the marriage with the Appellant, has two children, a male child born in 2001 and a female child born in 2005. The Appellant filed an application on May 04, 2015, requesting the authorities at PGIMER to enter the names of the two children born from the first marriage of her spouse in the official service record.
- The Appellant had her first biological child on June 04, 2019 and on June 06, 2019, she applied at PGIMER for maternity leave for the period from June 27, 2019 to December 23, 2019 in terms of Rule 43 of the Central Civil Services (Leave) Rules 1972 (**CCS Rules**). Subsequently, the authorities at PGIMER sought a clarification on July 03, 2019 regarding the fact that the spouse of the Appellant had two surviving children from his first marriage, to which the Appellant submitted a detailed reply.
- However, the request of the Appellant for the grant of maternity leave was rejected on September 03, 2019 on the ground that she had two surviving children and had availed of childcare leave earlier for the two children born from the first marriage of her spouse. Consequently, maternity leave for the child borne by her, considered as her third child, was found to be inadmissible in terms of the CCS Rules.
- Vide an office Order dated January 21, 2020, the Appellant's leave for the period from May 30, 2019 to June 03, 2019; June 04, 2019 to October 27, 2019; October 27, 2019 to November 06, 2019; and November 07, 2019 to November 31, 2019 was treated as earned leave, medical leave, half pay leave, and extraordinary leave, respectively.
- Aggrieved by the decisions of PGIMER dated September 03, 2019 and January 21, 2020, the Appellant filed an Application before Central Administrative Tribunal, Chandigarh Bench (**CAT**). Vide judgment dated January 29, 2021, CAT dismissed the Application and held that the decision of PGIMER to reject the maternity leave is correct since as far as PGIMER department is concerned, she already has two surviving children and she is taking benefit for them from the PGIMER by way of childcare leave and other benefits, and therefore, any child born to her now can only be considered as third child under the CCS Rules.
- Aggrieved by the judgment passed by CAT, the Appellant filed a Writ Petition before the High Court of Punjab & Haryana (**HC**), which by its judgment dated March 16, 2021, dismissed the petition on the ground that the Appellant did not meet the requirement of Rule 43 (1) of CSS Rules of having less than two surviving children for the purpose of being granted maternity leave.
- Aggrieved by the Order passed by the HC, the Appellant filed a Civil Appeal before the Supreme Court of India (**SC**).

Issue at hand?

- Whether a woman who has already availed childcare leave for spouse's children is entitled to maternity leave for her own biological child under the CSS Rules?

Decision of the Court

- At the outset, SC examined Rule 43 of the CSS Rules and placed reliance upon the decision in ***KH Nazar v. Mathew K Jacob***[4] and ***Badshah v. Urmila Badshah Godse***[5], wherein SC observed that provisions of a beneficial legislation must be interpreted with a purpose-oriented perspective, and the Courts must discern the intention of the legislature in making the law. Accordingly, SC noted that CSS Rules must be interpreted in light of the Maternity Benefit Act, 1961 which was enacted to secure women's right to pregnancy and maternity leave, and to afford women with as much flexibility as possible to live an autonomous life, both as a mother and as a worker, if they so desire.
- SC opined that like Maternity Benefit Act, 1961, the CSS Rules are also formulated to entrench and enhance the objects of Article 15 of the Constitution of India and other relevant constitutional rights and protections, which deal with advancing the interests of women. SC noted that Rule 43(1) of the CSS Rules contemplates the grant of maternity leave for a period of 180 days and a woman is also entitled to the grant of childcare leave Rule 43-C of CSS Rules for taking care of her two eldest surviving children, whether for rearing or for looking after any of their needs, such as education, sickness, and the like. Such childcare leave under Rule 43-C of CSS Rules can be availed of not only at the point when the child is born but at any subsequent period.
- SC opined that the Appellant was granted childcare leave in respect of the two biological children born to her spouse from an earlier marriage may be a matter on which a compassionate view was taken by the PGIMER authorities at the relevant time. SC further noted that the support of care work through benefits such as maternity leave, paternity leave, or childcare leave, availed by both parents, by the state and other employers is essential. SC held that the grant of childcare leave to the Appellant cannot be used to disentitle her to maternity leave under Rule 43 of the CSS Rules.
- While arriving at its decision, SC adopted a purposive interpretation such that the object and intent of the grant of maternity leave is not defeated. SC noted that the grant of maternity leave under CSS Rules is intended to facilitate the continuance of women in the workplace and childbirth must be construed in the context of employment as a natural incident of life and hence, the provisions for maternity leave must be construed in that perspective.
- SC held that there is a distinction between maternity leave and childcare leave provided under the CCS Rules by stating that they form different entitlements. The latter entitlement can be availed on occurrence of any of the situations averred to in Rule 43-C of CSS Rules. The grant of the childcare leave does not disentitle the woman from availing maternity benefit, which is a separate right provided for in the CCS Rules.
- In view of the above, SC set aside the judgment of the HC and of the CAT and held that the Appellant was entitled to the grant of maternity leave under Rule 43 of CSS Rules.

HSA
Viewpoint

By way of this judgement, the Supreme Court has interpreted Rules 43 and 43-C of CCS Rules with a bird's-eye view by understanding the intent and object behind the provisions of maternity leave and has opined that a compassionate view should be taken in application of provisions pertaining to maternity reliefs. The SC decision that a woman cannot be denied maternity leave for her biological child on the grounds that her husband had two children from a previous marriage, has established a benchmark which upholds the rights of women as mothers with regards to their childcare leaves.

Sri Chandrashekar R v. The State of Karnataka

High Court of Karnataka | WP No. 10473 of 2022

Background facts

- The Petitioner, a resident of Bengaluru, was aggrieved by the Azan or Adhan prayers that were being offered through loudspeakers, five times a day between 6.00 am to 10.00 pm throughout the year from mosques or masjids in Karnataka.
- The Petitioner claimed that even though Azan is an 'essential religious practice' of Muslims, the words 'Allahu Akbar' used in Azan (translated as 'Allah is the greatest') effect the religious beliefs of other faiths.
- Aggrieved by the same, the Petitioner filed a Writ Petition under Articles 226 and 227 of the Constitution of India before the High Court praying to issue a Writ of Mandamus or any other Writ or Order, directing Respondent No. 1 to 4 to stop the mosques or masjids in the state of Karnataka from using the objectionable words through loudspeakers while calling Azan or Adhan prayer 5 times in a day throughout the 365 days in a year.

[4] (2020) 14 SCC 126
[5] (2014) 1 SCC 188

Issue at hand?

- Whether the content of such Azan or Adhan prayers contains objectionable words, which are hurtful to the sentiments of believers of other faiths?

Decision of the Court

- The High Court opined that Articles 25 and 26 of the Indian Constitution embody the principle of religious toleration, and that the same is a characteristic of Indian civilization. Furthermore, Article 25(1) confers on all people the fundamental right to freely profess, practice and propagate their own religion. However, the aforesaid right is not an absolute right but is subject to restrictions on the grounds of public order, morality, and health, as well as subject to other provisions in Part III of the Constitution of India.
- The HC also held that the contention of the Petitioner that the contents of Azan or Adhan violate the fundamental rights guaranteed to the Petitioner as well as the persons of other faith cannot be accepted.
- The Court highlighted that it is not the case of the Petitioner himself that his fundamental right guaranteed under Article 25 of the Constitution of India is being infringed in any manner by calling of Azan or Adhan through loudspeakers or public address systems.
- However, the HC held that the use of loudspeakers and other such systems has to be in accordance with the provisions of the Noise Pollution Rules, 2000 read with Section 37 of the Karnataka Police Act, 1963.
- The HC while referring to an order issued by the High Court Coordinate Bench in which the Respondent-authorities were told to conduct a campaign to prohibit the misuse of loudspeakers and PA systems, directed the Respondent-authorities to implement the Court's orders and submit a compliance report within eight weeks guaranteeing that loudspeakers, PA systems, sound producing instruments, and other musical instruments are not utilized over the acceptable decibel level between 10 p.m. and 6 a.m.

HSA
Viewpoint

The Court has rightly observed that the Articles 25 and 26 of the Indian Constitution embody the principle of religious tolerance. In a nation as populated and religiously diverse as India, everyone must be afforded their freedom to practice and profess their religious beliefs and customs. Through this judgement, the HC has emphasized that the freedom given to each individual has to be practiced while keeping in mind that it does not encroach upon the rights and freedom of any other individual. It has masterfully struck a balance between the freedom to practice one's own religion and the freedom of others to live their lives peacefully.

Patil Automation Pvt Ltd & Ors v. Rakheja Engineers Pvt Ltd

Supreme Court of India | Civil Appeal No. of 2022 (arising out of SLP (C)No. 14697 of 2021) with Civil Appeal No. of 2022 (arising out of SLP (C)No. 5737 of 2022) along with Special Leave Petition (C) Diary No. 29458 of 2021

Background facts

- On October 12, 2020, Rakheja Engineers Private Limited (**Respondent**) filed a Commercial Suit under Order XXXVII of the Civil Procedure Code, 1908 (**CPC**) before the Additional District Judge, District Court, Faridabad, against Patil Automation Pvt Ltd, (**Appellant**).
- The Appellant filed an Application under Order VII Rules 10 and 11 read with Sections 9 and 20 of the CPC to reject the Plaint filed by the Respondent on account of non-compliance with Section 12A of the Commercial Courts Act, 2015 (**Act**), which mandated a statutory pre-litigation mediation.
- The Trial Court considered the judgment of the Bombay High Court decided by the Ld. Single Judge in ***Ganga Taro Vazirani v. Deepak Raheja***[6] and arrived at the conclusion that the afore-mentioned Suit be kept in abeyance and directed both the parties to appear before the Secretary, District Legal Services Authority, Faridabad on August 26, 2021 for the purpose of mediation as per the provisions of Section 12A of the Act.
- Aggrieved by this, the Appellant filed a Civil Revision Petition in the High Court of Punjab and Haryana. However, the Court upheld the decision of the Trial Court.
- Discontented with this, the Appellant filed a Civil Appeal arising from SLP (C) No. 14697 of 2021 in the Supreme Court of India (**SC**) against the aforesaid decision of the High Court of Punjab and Haryana.
- In the other Appeal arising out of SLP (C) No. 5737 of 2022, the impugned Order had been passed by the High Court of Madras, whereby a similar application filed by the Appellant-Defendant in a Commercial Suit instituted without having resorted to pre-litigation mediation under Section 12A of the Act, was rejected.
- Another SLP Diary No. 29458 of 2021, impugning the same Order which was impugned in SLP (C)No. 5737 of 2022, was filed by an Applicant, not a party to the Suit in question, but whose case was that a Suit was pending in which the similar question had arisen. The Supreme Court permitted the aforesaid intervention.

[6] 2021 SCC OnLine Bom 195

Issues at hand?

- Whether the statutory pre-litigation mediation contemplated under Section 12A of the Act (as amended by the Amendment Act of 2018) was mandatory?
- Whether the Courts below have erred in not allowing the applications filed under Order VII Rule 11 of the CPC to reject the Plaints filed by the Respondents in these Appeals without complying with the procedure under Section 12A of the Act?
- Whether the power under Order VII Rule 11 is to be exercised only on an application by the Defendant and the stage at which it can be exercised?

Decision of the Court

- At the outset, the Supreme Court referred to a number of judgments, namely ***Bhikraj Jaipuria v. Union of India***[7], and ***Lachmi Narain & Ors v. Union of India & Ors***[8], to comprehend the basis on which an enactment should be considered directory or obligatory in character and its effect to render a Suit filed by a Plaintiff, void. The Court referred to its judgment in ***State of UP & Ors v. Babu Ram Upadhya***[9] to recapitulate the Rules relating to interpretation, wherein it was observed that the use of the word 'shall', prima facie, indicated that it was mandatory, but the Court may determine the real intention of the legislature by scrutinizing the extent of the statute.
- The Court also took in consideration its judgments which had put to rest the controversy about the mandatory nature of the requirement of a previous Notice to be given to comply with Section 80 of CPC, including ***Bhagchand Dagadusa Gujrathi & Ors v. Secretary of State for India***[10], ***State of Madras v. CP Agencies & Ors***[11], ***Bihari Chowdhary & Anr v. State of Bihar & Ors***[12], ***Gangappa Gurupadappa Gugwad, Gulbarga v. Rachawwa, Widow of Lochanappa Gugwad & Ors***[13], whereby the Supreme Court conclusively determined that it would be the duty of the Court to reject the Plaint on account of failure to comply with Section 80 of CPC.
- Subsequently, the Court took note of the judgment laid down by the Ld. Single Judge of the Bombay High Court in *Ganga Taro (supra)* who propounded that Section 12A was merely a procedural provision and that it was not as if the Court lacked inherent jurisdiction to entertain a Suit without following Section 12A of the Act. However, the Supreme Court pointed that the Division Bench of the High Court of Bombay, in an Appeal, had without mincing words elucidated that Section 12A of the Act was mandatory in nature and reversed the aforesaid finding of the Ld. Single Judge. Further, the Supreme Court discussed the judgments laid down by various High Courts in ***Dredging and Desiltation Company Pvt Ltd v. Mackintosh Burn and Northern Consortium & Ors***[14], ***Laxmi Polyfab Pvt Ltd v. Eden Realty Ventures Pvt Ltd & Anr***[15], and ***Awasthi Motors v. Managing Director M/s Energy Electricals Vehicle & Anr***[16], wherein it was expounded that Section 12A of the Act was mandatory.
- On foundation of the above, the Court firmly promulgated that Section 12A of the Act was mandatory and that any Suit instituted in contravention of the mandate of Section 12A must be met with outright rejection of the Plaint under Order VII Rule 11 of CPC. The Supreme Court directed that the afore-mentioned declaration be made effective from August 20, 2022, to ensure that the concerned stakeholders are well-informed thereof.
- In the present case, the Supreme Court noted that admittedly, there were no urgent relief contemplated and thus, in view of Section 12A of the Act, rejected the Plaints, set aside the impugned Orders and allowed the applications filed under Order VII Rule 11. Thus, the Court answered the first and second issue in affirmative.
- With reference to the third issue, the Court enunciated the principles laid down by it in ***Madiraju Venkata Ramana Raju v. Peddireddigari Ramachandra Reddy & Ors***[17] and ***Patasibai & Ors v. Ratanlal***[18], to highlight that the Plaint can either be rejected by the Courts by exercising suo motu powers available under Order VII Rule 11 or on an application by the Defendant, in a case where Summons were issued.

HSA
Viewpoint

Through this judgment, the Supreme Court has noteworthily replaced mammoth confusion with immense clarity on the following twofold aspects:

- That the Courts are empowered to suo motu reject the Plaint under Order VII Rule 11 of CPC
- That before institution of a Suit, where no urgent relief is contemplated, compliance with Section 12A of the Act would be mandatory

As it encourages dispute resolution through the platform of mediation, the judgment is perfectly in consonance with the spirit of the Act and thus, can be deemed to be regarded as one which would have a significant impact on the mediation regime in India.

[7] 2021 SCC OnLine Bom 195
[8] AIR 1976 SC 714
[9] AIR 1961 SC 751
[10] AIR 1927 PC 176
[11] AIR 1960 SC 1309
[12] (1984) 2 SCC 627
[13] (1970) 3 SCC 716
[14] 2021 SCC Online Calcutta 1458
[15] AIR 2021 Calcutta 190
[16] AIR 2021 Allahabad 143
[17] (2018) 14 SCC 1
[18] (1990) 2 SCC 42

Sukoon Construction Pvt Ltd v. The Collector of Stamp & Anr

Bombay High Court | Writ Petition (L) No. 6268 of 2022

Background facts

- In 2009, one Vasudev Babayya Kamat had assigned his leasehold rights, title and interest in a 1-acre plot (**said plot**) to Sukoon Constructions Pvt Ltd (**Petitioner**) by a Deed of Assignment dated August 29, 2009 (**Deed**).
- Prior to the execution of the Deed, Petitioner paid a stamp duty of INR 3,75,000 on this Deed. Upon considering the nature of the transaction, the market value of the plot is certified as INR 6,11,68,000. Accordingly, on May 29, 2010, Respondent No. 1 (**Collector**) determined and endorsed INR 30,58,400 as the Stamp Duty payable.
- The Petitioner accordingly paid the stamp duty and thereafter, a Deed of Confirmation dated June 4, 2010 came to be registered before the Registrar of Assurances.
- On January 08, 2014, the Petitioner received a notice dated December 31, 2013 from Respondent No. 1 informing the Petitioner that upon conducting an internal audit, it was noticed that the Deed was inadequately stamped. Although the notice dated January 8, 2014 was issued to the Petitioner, but at the instance of Respondent No. 1, the Petitioner submitted its reply.
- Respondent No. 1 then issued 03 more notices dated August 26, 2019, November 26, 2019 and February 3, 2022 stating that a sum of INR 26,35,500 was payable towards stamp duty along with a penalty of INR 73,79,400.
- Thus, Respondent No. 1 demanded a total sum of INR 1,00,14,900 towards the arrears of land revenue under Section 46 of Maharashtra Stamp Act, 1958 (**Act**).
- The Petitioner challenged these notices before the Bombay High Court.

Issue at hand?

- Does the Collector have power to revise the stamp duty once it has already been levied and paid?

Decision of the Court

- While deciding the present Writ Petition, the Court based its findings on the Sections 31, 32, 33, 46, and 53-A of the said Act, and also relied on the decisions of the Bombay High Court in ***Guruashish Construction Pvt Ltd v. Collector of Stamps & Anr***[19], and the decision of the Apex Court in ***The Government of Uttar Pradesh v. Raja Mohammad Amir Ahmad Khan***[20], before coming to the following conclusions:
  - Once the Collector has passed an order i.e., when he certifies an endorsement on the document depicting payment of full duty, then that adjudication becomes effective and final, and it is not open for him to reopen the said adjudication.
  - From the bare reading of Section 53-A of the Act, it would be apparent that it is only the Chief Controlling Revenue Authority which has been given the power of revision when through mistake or otherwise an instrument is charged with less duty than leviable.
  - Once the Collector under Section 32(1) of the Act issues adjudication certificate by making an endorsement on the Deed, the Deed would be deemed to be duly stamped.
  - Such endorsement having been made by the Collector, it is only the Chief Controlling Revenue Authority who has the power to revise and examine the instrument for ascertaining whether the stamp duty was properly charged and the Collector has no power to review its own decision either suo moto or because of any objections which is subsequently raised by the Auditors or otherwise.
  - Therefore, the Collector could not have revised the stamp duty upon the Deed, especially when he has already levied the stamp duty and endorsed a certificate to that effect and basis of which the stamp duty was also paid by the Petitioner.
- The Court quashed and set aside the notices issued by Respondent No. 1 against the Petitioner.

HSA
Viewpoint

The decision of the High Court is correct and legally sound. As in the instant case, it was Respondent No. 1 who at the time of certifying the market value of the property 'might not' have correctly calculated the stamp duty despite considering the documents and the nature of the transaction. The Petitioner duly paid the stamp duty which the Respondent No. 1 determined to be payable for the instant transaction. Therefore, Respondent No. 1 cannot after 6 years demand the supposed deficit stamp duty along with the penalty for no fault of the Petitioner, especially since Respondent No. 1 has become functus officio as per Section 53-A of the Act. This decision of the Court would hopefully instill a higher sense of responsibility in the minds of the Public Officers so that they act in a more responsible and timebound manner towards the general public.

[19] 2012 SCC Online Bom 584
[20] AIR 1961 SC 787

My Palace Mutually Aided Co-Operative Society v. B Mahesh & Ors

Supreme Court of India | Civil Appeal No. 5784 of 2022

Background facts

- The present dispute relates to Sy. No. 57 (Old Sy. No. 274) in Shamsguda Village, Ranga Reddy District, Telangana forming part of S. No. 252 of the list of Mukthas in the Preliminary Decree dated April 06, 1959 by the erstwhile High Court of Andhra Pradesh in CS No. 7/1958.
- The underlying original suit was filed in 1953 before the City Civil Court, Hyderabad by one Smt. Sultana Jahan Begum, the daughter of Nawab Moinuddowla Bahadur. The Plaintiff was seeking partition of properties of the Nawab known as 'Asman Jahi Paigah'.
- This original suit was ultimately transferred to the file of the High Court numbered as C.S. No. 7/1958. The suit, along with certain applications, was disposed of by a preliminary-cum-final decree dated April 06, 1959 passed by the High Court of Andhra Pradesh. The judgment recorded that the Plaintiff withdraws the suit against defendant Nos. 27 to 49. It also recorded that a compromise was affected amongst some of the defendants.
- Thereafter, an application was filed in C.S. No. 7/1958 by the Appellant herein along with a party, for passing a final decree in their favor in respect of property measuring Acs 92.56 cts. and Acs. 27.00 gts land in Sy. No. 57 of Shamsguda Village, Balanagar Mandal, Ranga Reddy District. The learned Single Judge of the High Court of Andhra Pradesh allowed the said Application in part vide final decree dated September 19, 2013 as sought by the Appellant and granted a declaration that they are the absolute owners of Acs. 92.56 cts in Sy. No. 57 of Shamsguda Village.
- The State of Andhra Pradesh challenged the said Order in OSA SR No. 3744 of 2014. After formation of the State of Telangana on the bifurcation of the composite State of Andhra Pradesh, the State of Telangana filed IA No. 2 of 2016 seeking condonation of delay of 182 days in filing the Appeal. Responding to the said IA, the appellant stated that the delay in filing of the Appeal is much longer, amounting to 729 days.
- Thereafter, I.A. No. 2 of 2017 was filed by the State of Telangana to condone a delay of 913 days in filing the Appeal. By order dated December 22, 2020, the Division bench of the High Court of Telangana dismissed the two applications for condonation of delay in filing the appeal, being I.A. No. 2 of 2016 and I.A. No. 2 of 2017. As a consequence of the same, the State of Telangana's appeal, OSA SR No. 3744 of 2014 was dismissed. In these circumstances, after lapse of nearly 7 years since the Final Decree was granted in favor of the Appellant herein, the Respondents herein filed 6 IAs (in Application 837/2013 in CS No. 7/1958) before the High Court of Telangana in 2020.
- A Division Bench of the High Court of Telangana vide order dated January 05, 2021, allowed IA No. 1/2021 preferred by the Respondents and granted them leave to file the Application recalling the final decree dated September 19, 2013, passed by the learned Single Judge of the High Court in Application No. 837/2013 in C.S No. 7/1958. 12. The aforesaid Order was challenged before the Supreme Court (SC) in an earlier Special Leave Petition, being SLP(C) No. 8025/2021. By Order dated July 06, 2021, the Supreme Court dismissed the said petition and gave the parties liberty to raise all objections when the substantial application for recalling the final decree was being heard.
- After hearing the submissions of the parties, the Division Bench of the High Court in I.A No. 5/2020 in Application No. 837 of 2013 in CS No. 7 of 1958, passed the Impugned Order dated September 21 2021, allowing the recall of the final decree dated September 19, 2013.
- Aggrieved by the impugned judgment of the High Court recalling the final decree dated September 19, 2013, the Appellant has approached the Supreme Court by way of the present Civil Appeal.

Issue at hand?

- Whether a third party to a final decree can be allowed to file such applications, by invoking the inherent powers of the Court under Section 151 of Code of Civil Procedure (**CPC**)?

Decision of the Court

- At the very outset, the SC examined the powers of the Courts under Section 151 of the CPC. It was observed that in exercising powers under Section 151 of the CPC, it cannot be said that the Civil Courts can exercise substantive jurisdiction to unsettle already decided issues. A Court having jurisdiction over the relevant subject matter has the power to decide and may come either to a right or a wrong conclusion. Even if a wrong conclusion is arrived at or an incorrect

decree is passed by the jurisdictional Court, the same is binding on the parties until it is set aside by an Appellate Court or through other remedies provided in law.

- The SC states that the Respondents in the present case had access to recourse under Section 96 of the CPC, which allows for appeals from an original decree. The High Court, which was exercising its original jurisdiction, was in effect conducting a trial, and the final decree passed by the High Court on September 19, 2013 was in effect a decree in an original suit. As such, there existed a right of appeal under Section 96 of the CPC for the Respondents. Though they were not parties to the suit, they could have filed an appeal with the leave of the Court as an affected party.
- It was further observed that Sections 96 to 100 of CPC make it clear that the provisions are silent about the category of persons who can prefer an appeal. On the other hand, the SC also took into consideration the well settled legal position that a person who is affected by a judgment but is not a party to the suit, can prefer an appeal with the leave of the Court. The sine qua non for filing an appeal by a third party is that he must have been affected by reason of the judgment and decree which is sought to be impugned.
- It further observed the Civil Courts cannot exercise substantive jurisdiction to unsettle already decided issues. Section 151 of the CPC can only be applicable if there is no alternate remedy available in accordance with the existing provisions of law.
- The Hon'ble Bench observed and stated that such inherent power may not circumvent statutory restrictions or enact remedies that are not provided for by the Code. Invoking Section 151 instead of bringing new lawsuits, appeals, amendments, or reviews is not permitted. A party cannot use Section 151 as cover to assert historical wrongs, make amends, and get through CPC procedural safeguards.
- The SC opined that that the High Court should not have decided the Recall Application filed by the Respondents, let alone pass such extensive orders which has the effect of unsettling proceedings and transactions which have a history of more than 60 years in a proceeding, based on an application filed under Section 151 of the CPC.
- In view of the above, the Appeal was allowed by setting aside the Order dated September 21, 2021 passed in I.A No. 5/2020 in Application No. 837 of 2013 in CS No. 7 of 1958 by the High Court.

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Viewpoint

The Supreme Court's decision that a person affected by a judgment/decree but not a party to suit, can prefer appeal with the leave of the Court, can be said to be a necessary and required reiteration of law of appeals in India. The precedent clears up the ambiguity with regards to the issue as to who is eligible to prefer an appeal under Sections 96-100 of Code of Civil Procedure, 1908. This is a very important and landmark judgment, basis which many aggrieved parties who were not party to the Suit, can now prefer an appeal with the leave of the concerned Court and avail justice. This judgment also sheds light on the fact that the scope of Section 151 of the CPC is limited in nature and cannot be used to cover/subvert historical wrongs.

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AT A GLANCE

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