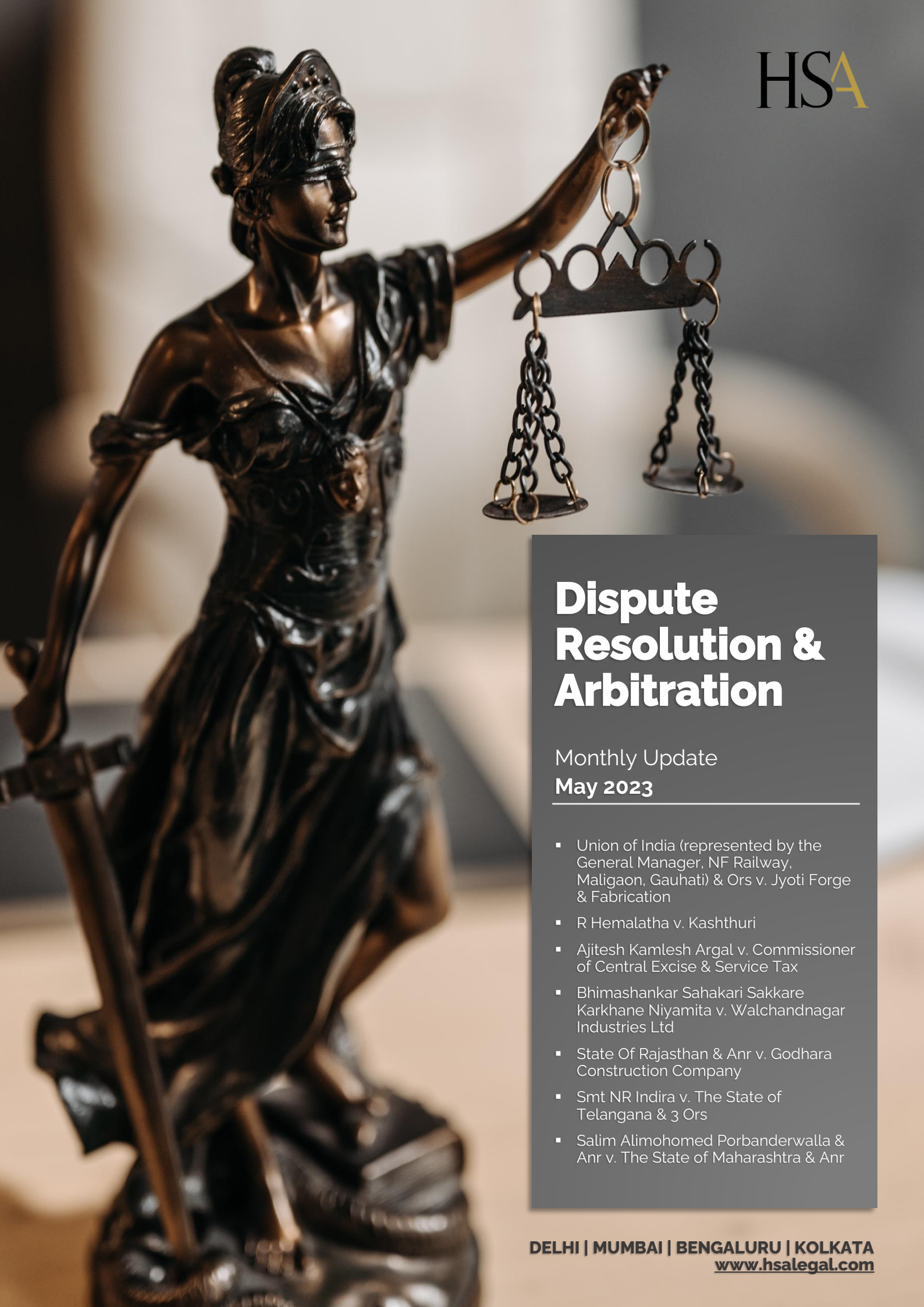

HSA

Dispute Resolution & Arbitration

Monthly Update

May 2023

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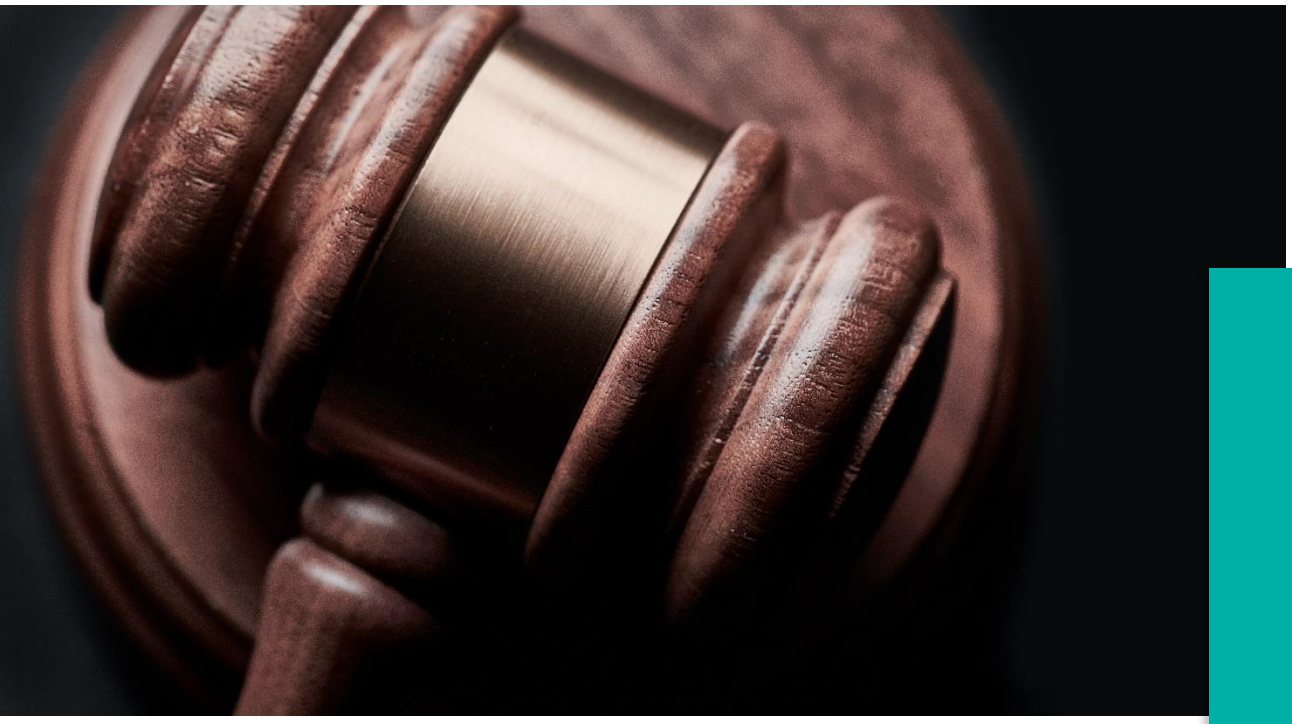
DISPUTE RESOLUTION AND ARBITRATION UPDATE



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Union of India (represented by the General Manager, NF Railway, Maligaon, Gauhati) & Ors v. Jyoti Forge & Fabrication

Gauhati High Court | Arb. A/6/2022

Background facts

- The Appellant had issued a tender for execution of works pertaining to 'Provision of Separator made of 'W' Steel Section Mounted on Steel Channel Post in connection with the work at Dibrugarh Town- New Tinsukia to protect track mounting (11 kms)'. The Respondent was found successful in the tender process and a Letter of Acceptance (**LOA**) dated February 22, 2013 was issued in its favor, post which a formal Agreement was executed between the two parties.
- Although the Respondent was required to complete the work by November 21, 2013 as per the said Agreement, it could not do so. Hence, the Respondent requested the Appellant to grant extension of time for completion of work and ultimately time was extended from time to time and finally the Respondent had completed the work on July 18, 2014. The Respondent was then made to sign a no claim certificate while claiming refund of their security deposit and earnest money.
- Thereafter, vide a letter dated July 21, 2015, the Respondent claimed enhanced price variation as per Clause 3.15 of the Agreement which provided for Payment of Price Variation (**PVC**). The Appellant denied the price variation on the ground that the Respondent had signed a no claim certificate and also stated that the extension granted to the Respondent to finish the work was on the condition that there shall be no Liquidated Damages (LD) and no PVC. Since a dispute had arisen between the parties, arbitration was invoked in terms of the Agreement and the proceedings were commenced before a Sole Arbitrator.
- Upon completion of the said arbitral proceedings, the Sole Arbitrator passed an Award dated May 25, 2019, thereby allowing the PVC as claimed by the Respondent to a tune of INR 26,62,378 along with interest @6.5% per annum from the date of completion of the work along with costs (**Award**).
- Being aggrieved by the said Award, the Appellant filed a Petition under Section 34 of the Arbitration & Conciliation Act, 1996 (Arbitration Act) along with an Application for condonation of delay (**Application**), before the Learned District Judge, Tinsukia.

- Vide an Order dated January 20, 2022, the District Judge held that the provisions of the Limitation Act, 1963 (**Limitation Act**) would not be applicable to a Petition under Section 34 of the Arbitration Act and therefore dismissed the aforesaid Application (**Impugned Order**).
- Aggrieved by the Impugned Order, the Appellant preferred the instant Appeal.

Issue at hand?

- Whether the Court has the power to condone the delay in filing an Application challenging the award by under Section 34 of the Arbitration Act, after a lapse of 3 months and 30 days and thereafter?

Decision of the Court

- At the outset, the High Court (HC) examined Section 34 of the Arbitration Act and held that it places a limit on the period of condonation of delay by using the phrase '*may entertain the application within a further period of 30 days but not thereafter*.' It further held that the words 'but not thereafter' in the proviso to sub-Section (3) of Section 34 of the Arbitration Act constitutes an express exclusion within the meaning of Section 29(2) of the Limitation Act and as a result, the same would prevent the application of Section 5 of the Limitation Act.
- The HC further held that if a petition is not filed within the prescribed period of 3 months, the Court is left to exercise its discretion to condone the delay only to the extent of 30 days thereafter and that too if sufficient cause is shown. The HC also noted that the intent of the legislature is evidenced by use of the words '*but not thereafter*' in the proviso to Section 34(3), which makes it clear that as far as the limitation for filing a Petition for setting aside an Arbitral Award is concerned, the statutory period prescribed is 3 months, which is extendable by another period up to 30 days subject to the satisfaction of the Court.
- The HC relied on the decisions of the Supreme Court in the cases of ***Union of India v. Popular Construction Company***[1] and ***Simplex Infrastructure Ltd v. Union of India***[2] and held that Section 5 of the Limitation Act is not applicable to a Petition challenging an Arbitral Award under Section 34 of the Arbitration Act.
- The HC further held that Section 34(3) of the Arbitration Act provides for a complete and exhaustive code with regard to the limitation for filing an Application for setting aside an Arbitral Award and also stated that a Petition for setting aside an Arbitral Award cannot be entertained beyond the prescribed time limit of 3 months and 30 days, regardless of whether sufficient cause is shown.
- The HC held that the Appellant failed to provide a reasonable explanation for the delay in filing the Petition under Section 34 of the Arbitration Act. It was further noted that the Appellant did not mention how much time was lost in obtaining internal approval and did not explain what prevented them from filing the Appeal immediately after receiving the copy of the Arbitral Award.
- In view of the above, the HC held that there is no reason to interfere with the findings and conclusion arrived at by the District Judge, Tinsukia set out in the Impugned Order and thereby dismissed the Appeal.

HSA
Viewpoint

This decision of the High Court clarifies that Section 5 of the Limitation Act does not apply to Petitions filed under Section 34 of the Arbitration Act. Furthermore, the language used in Section 34 is categorical and states that the delay in filing a Petition thereunder can only be condoned, upon provision of credible reasoning and at the complete will of the Court if it is filed within the 30-day period post expiration of 3 months from the date of receipt of the Award. This decision makes it clear that the Courts do not have the power to exercise their discretion and relax the limitation of 120 days (including the extension of 30 days) and is a positive step towards accelerating the litigation process in India.

R Hemalatha v. Kashthuri

Supreme Court of India | Civil Appeal No. 2535/2023 (Arising out of SLP (C) No. 14884/2022)

Background facts

- Kashthuri (**Respondent**) was the original plaintiff who instituted a Civil Suit for specific performance of the agreement to sell (**Agreement**) dated September 10, 2013, entered into with R Hemalatha (Appellant). During the Trial Court proceedings, a preliminary issue concerning the admissibility of the said Agreement in evidence was framed.
- It was the case of the Appellant that the Agreement was an unregistered document and shall be inadmissible in evidence since the Tamil Nadu Amendment Act No. 29 of 2012 to the Registration Act, 1908 (**Act**), provided that the instruments of an agreement relating to the sale of immovable property of the value of INR 100 and upwards needs to be compulsorily required to be registered. Whereas the Respondent submitted that according to Section 49(a) and (c) of the Act, an unregistered Agreement to sell can be admitted as evidence of a contract in a suit of specific performance. The Trial Court held that the preliminary issue was in favor of the Appellant by observing that the unregistered agreement shall not be admissible in evidence.

[1] (2001) 8 SCC 470
[2] (2019) 2 SCC 455

- Being aggrieved with the Order passed by the Trial Court, the Respondent preferred a Revision Application before the High Court at Madras at Madurai (HC). The HC set aside the Order passed by the Trial Court in view of Section 49 of the Act and directed that the said Agreement be received in evidence since the suit in question is a suit for specific performance, which falls within the first exception carved out in the proviso to Section 49 of the Act.
- Being aggrieved by the Order of the HC, the Appellant filed an appeal before the Supreme Court (SC).

Issue at hand?

- Whether an unregistered agreement for sale of immovable property could be received in evidence in a suit filed for specific performance in view of the State Amendment effected by the state of Tamil Nadu?

Decision of the Court

- At the outset, the SC carefully perused the Section 17 of the Act post Tamil Nadu Amendment Act, 2012, and noted that by the Tamil Nadu Amendment Act, 2012, Section 17(1)(g) has been inserted and 'explanation' to Section 17(2) has been omitted. SC noted that on and after the amendment, Section 17(1)(g) stipulates that an instrument of an Agreement relating to the sale of immovable property of the value of INR 100 and upwards is required to be registered compulsorily. SC further observed that there is no corresponding amendment made to Section 49 of the Act.
- SC also considered the primary statement of objects and reasons to the Tamil Nadu Amendment Act, 2012, and noted that the amendment has been introduced by the State of Tamil Nadu keeping in mind the loss to the exchequer as public were executing the documents relating to the sale of the immovable property etc. on a white paper or a stamp paper of nominal value.
- SC observed that Section 49 of the Act was inserted vide Act No. 21 of 1929 and then Section 17(1A) came to be inserted by Act No. 48 of 2001 with effect from September 24, 2001 by which the documents containing contracts to transfer or consideration any immovable property for the purpose of Section 53 of the Transfer of Property Act is made compulsorily to be registered if they have been executed on or after 2001 and if such documents are not registered on or after such commencement, then there shall have no effect for the said Section 53A of Transfer of Property Act. SC arrived at the conclusion that the exception to the proviso to Section 49 is provided under Section 17(1A) of the Registration Act.
- In view of the above, SC held that relying upon proviso to Section 49 of the Registration Act that the unregistered document in question, namely the unregistered Agreement to Sell, shall be admissible in evidence in a suit for specific performance and the proviso is exception to the first part of Section 49. Thus, SC dismissed the present Appeal and upheld the Order passed by the HC.

HSA
Viewpoint

This judgment clarifies that an agreement to sell property which is not registered under the provisions of the Registration Act, 1908 can be admitted as evidence in a suit seeking specific performance of such agreement. This judgment was delivered in the context of a state amendment which required an agreement for sale of property to be registered. By way of this decision, the SC has clarified a broader proposition that an unregistered agreement for sale of property may be admitted in evidence of a contract in a suit for specific performance under the Specific Relief Act, 1877.

Ajitesh Kamlesh Argal v. Commissioner of Central Excise & Service Tax

The Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad (CESTAT) | Service Tax Appeal No. 11229 of 2013-DB and 13931 of 2013-DB

Background facts

- Ajitesh Kamlesh Argal (**Appellant**) is a cricketer and plays cricket in the Indian Premier League (**IPL**) for a team owned by KPH Dream Cricket Pvt Ltd (**KPH**) under an agreement entered between them.
- In accordance with the said Agreement, the Appellant received certain remuneration from KPH for playing for the team owned by them. Additionally, the Appellant also received a small consideration from Nike India Pvt Ltd (**Nike**) for displaying their brand logo for the promotion of their product.
- It is the case of the Service Tax Department (**Department**) that the Appellant had provided the service of brand promotion which falls under the category of 'Business Auxiliary Service'. Hence, the Department held that the remuneration received by the Appellant from KPH is taxable as under the Service Tax regime. Additionally, the Department also raised a demand for Service Tax from the Appellant on the remuneration received by him from Nike for participation in promotional activities.
- The Appellant disputed the claims raised by the Department and urged that the remunerations received by him were not subject to Service Tax. However, the Commissioner of Central Excise & Service Tax ruled in favor of the Department and passed orders dated March 13, 2013 and August 26, 2013, thereby directing the Appellant to pay the Service Tax on the remuneration received by the Appellant (**Impugned Orders**).

- Being aggravated by the aforesaid Orders, the Appellant filed the present Appeal.

Issues at hand?

- Whether the Appellant had provided the service of brand promotion which falls under the category of 'Business Auxiliary Service' and is accordingly liable to pay Service Tax on the remuneration received from KPH?
- Whether the Appellant was liable to pay Service Tax on the remuneration received by him from Nike for participation in promotional activities?

Decision of the Tribunal

- It was the case of the Appellant that the Agreement entered into by him with KPH was in the form of an employment agreement and he was not engaged in brand promotion. Accordingly, it was submitted that Service Tax shall not be attracted to the remuneration received by the Appellant from KPH.
- In support of the aforesaid submission, reliance was placed on ***CESTAT Order No. A/10086-10087/2023 dated January 20, 2023***, ***Commissioner of Customs & Central Excise, Goa v. Swapnil Asnodkar***[3], ***CE, C & CGT, Delhi v. Piyush Chawla***[4], ***Yogesh Takawake***[5], ***Sourav Ganguly v. UOI & Ors***[6].
- As regards the demand on remuneration received from Nike, it was submitted that submits that after deduction of remuneration received from KPH, the remuneration amount is much below the threshold limit of small-scale exemption under Notification No. 06/2005-ST dated May 01, 2005. Therefore, the entire demand is not sustainable.
- The Respondent reiterated the findings of the Impugned Orders.
- After hearing both parties and taking their submissions into consideration, the CESTAT held that major amount of remuneration received by the Appellant was for playing cricket in the IPL. The CESTAT placed reliance on the judgement of the Calcutta High Court in the case of Sourav Ganguly (supra), where it was held that that the arrangement between the owner company and the cricket player was of employment, and players were not directly involved in brand promotion of a brand owner.
- In view of the same, it was held that the activity of the cricket player did not fall under the category of 'Business Auxiliary Services' and, accordingly, the Appellant is not liable to pay Service Tax on the remuneration received from KPH.
- The CESTAT further held that the remuneration received by the Appellant from Nike was for direct brand promotion. However, the Tribunal also noted that the value of such service provided by Nike was well within the threshold limit which is provided under the Exemption Notification 6/2005-ST dated May 01, 2005. Hence it was held that the Appellant shall be eligible for small scale exemption provided under aforesaid Notification up to the threshold limit of gross value in a Financial Year and shall not have to pay Service Tax on the revenue received from Nike.
- In view of the above, the CESTAT arrived at the conclusion that the Impugned Orders were not sustainable and, accordingly, set aside the same.

HSA
Viewpoint

This decision clarifies that the arrangement between the owner company and the cricket player is that of employment and that the player is not involved in brand promotion activities. It is essential that the Revenue Department be abreast with the current laws and corresponding precedents, to avoid protracted litigation. By way of this decision, the CESTAT has promoted a fair and consistent application of tax laws and its corresponding precedents in the country.

Bhimashankar Sahakari Sakkare Karkhane Niyamita v. Walchandnagar Industries Ltd

Supreme Court of India | Civil Appeal No. 6810 of 2022 (Arising out of SLP (C) No. 11216 of 2022)

Background facts

- An Arbitral Award was passed against the appellant under the provisions of the Arbitration Act on August 24, 2016. Section 34(3) of the Arbitration & Conciliation Act, 1996 prescribes 90 days for preferring an Application against the Arbitral Award. However, the said period was extendable by a further period of 30 days in terms of the proviso to Section 34(3) of the Arbitration & Conciliation (Amendment) Act, 2016 (**Arbitration Act**).
- In this case appellant filed an Application under Section 34 of the Arbitration Act, challenging the award passed by the Arbitral Tribunal to the Additional District & Sessions Judge, Vijaypur (Trial Court). The Appellant also filed the Interlocutory Application for condonation of delay.

[3] 2018 (10) GSTL 479 (Tri. Mumbai)
[4] 2018 (7) TMI-1009 - New Delhi
[5] 2019 (8) TMI 1693 - CESTAT, Mumbai
[6] 2016 (7) TMI-237 - Calcutta High Court

- On account of the Trial Court being closed for winter vacation from December 19, 2016 to January 01, 2017, the extendable condonable period of 30 days contemplated in the proviso of Section 34 (3) Arbitration Act expired on December 24, 2016.
- The Appellant filed a Section 34 Application as well as an Interlocutory Application for condonation of delay on the reopening day i.e on January 02, 2017 contending that the said Award was misplaced.
- The Trial Court observed that in that view of the matter, the period of limitation would commence from August 24, 2016, and 120 days are to be counted from August 24, 2016. Thus, the Trial Court dismissed the Application and refused to condone the delay and held that the period beyond 120 days is not condonable as under the Arbitration Act, the maximum period provided for preferring an Application under Section 34 is 120 days (**Impugned Order**).
- Feeling aggrieved and dissatisfied with the order passed by the Trial Court, the Appellant preferred an Appeal to the High Court.
- The HC dismissed the Appeal by observing that the expression 'prescribed period' appearing in Section 4 of the Limitation Act, 1963 (**Limitation Act**) cannot be construed to mean anything other than the period of limitation and, thus, any period beyond the prescribed period, during which the Court or Tribunal has the discretion to allow a person to institute the proceeding, cannot be taken to be 'prescribed period'.
- Feeling aggrieved and dissatisfied with the Impugned Order and order passed by the High Court, the original Applicant (Appellant) had preferred the appeal to the Supreme Court (**SC**).
- The Appellant contended that the aim and object of the limitation period and statutory grace period provided in the Arbitration Act is to ensure that parties who sleep over their rights and come to the Court belatedly are not allowed to upset the apple cart. The Appellant submitted that Section 10 of the General Clauses Act, 1897 (**General Clauses Act**) has been enacted to address precisely this kind of a situation and merely because the benefit of Section 4 of the Limitation Act is unavailable in a case, should not ipso facto exclude the application of the General Clauses Act.
- On the other hand, the Respondent contended that Section 4 of the Limitation Act, as well as Section 5 of the Limitation Act, has no application to the condonable period Under Section 34 of the Arbitration Act, and Section 10 of the General Clauses Act cannot be given to the Appellant, as the present proceeding falls within the ambit of the phrase 'any action or proceeding to which the Indian Limitation Act, 1877, applies'.

Issue at hand?

- Whether the Trial Court was justified in not condoning the delay in preferring the Application under Section 34(3) of the Arbitration Act, which was filed after the expiry of 120 days but filed on the first day of reopening after the winter/Christmas vacation and in a case where the condonable period of 30 days under Section 34(3) of the Arbitration Act had fallen during the winter/Christmas vacation? The question concerns the applicability of Section 4 of the Limitation Act and Section 10 of the General Clauses Act, in the facts and circumstances of the case.

Decision of the Court

- Upon careful perusal of the provisions of Section 34 of the Arbitration Act, Section 10 of the General Clauses Act, and Section 4 of the Limitation Act, the SC observed that the benefit of exclusion of the period during which the Court is closed is available only when an Application for setting aside the Award is filed within 'prescribed period of limitation' and it is not available on account of period extendable by the Court in the exercise of its discretion.
- SC noted that Section 4 of the Limitation Act enables a party to institute a suit, prefer an appeal, or make an Application on the day Court reopens where the prescribed period for any Suit, Appeal or Application expires on the day when the Court is closed. However, according to the Section 2 (j) of the Limitation Act, the 'period of limitation' means the period of limitation prescribed for any Suit, Appeal or Application by the Schedule, and 'prescribed period' means the period of limitation computed in accordance with the provisions of this Act.
- SC further noted that the period of 30 days beyond 3 months which the Court may extend on sufficient cause being shown as per the proviso of sub-Section (3) of Section 34 of the Arbitration Act is not the 'period of limitation' or 'prescribed period'. Therefore, Section 4 of the Limitation Act, is not attracted to the facts of the present case.
- SC disregarded the Appellant's contention that the Limitation Act shall not apply to the proceedings under the Arbitration Act and observed that Section 43(1) of the Arbitration Act specifically provides that the Limitation Act shall apply to the arbitration proceedings. However, SC relied on the observation made in the case of ***Union of India v. Popular Construction Co***[7] and

HSA
Viewpoint

SC has rightly dismissed the appeal petition filed by the Appellant considering the Court vacations are notified well in advance and it would not account for a fortuitous circumstance which could impede the Applicant from making an Application within the said period. This is the important judgment where the SC has made it clear that the extendable period on account of the Court exercising its discretion shall not be considered as the 'prescribed period of limitation'. Moreover, SC has clarified that the Limitation Act will apply to Arbitration proceedings as per Section 43(1) of the Arbitration Act except to the extent its applicability has been excluded by the express provision contained in Section 34(3) of the Arbitration Act. Thus, to set aside the Arbitral Award the Application should be made to the Court within the prescribed period of 3 months from the date on which the party making Application has received the Award under Section 34 of the Arbitration Act.

[7] (2001) 8 SCC 470

noted that the Arbitration Act is a special law and provides a period of limitation different from that prescribed under the Limitation Act, the period of limitation prescribed under the Arbitration Act shall prevail and shall be applicable and to that extent, the Limitation Act shall be excluded.

- SC further observed that the Application challenging an Award filed beyond the period mentioned in Section 34(3) of the Arbitration Act would not be an Application as per sub-Section (3) as required under Section 34(1) of the Arbitration Act.
- Given the above, SC held that the Trial Court and HC have not committed any error in law and referred its decision in the case of the ***Assam Urban Water Supply & Sewerage Board v. Subhash Projects & Marketing Ltd***[8] that the Limitation Act shall apply to the matters of arbitration covered by Arbitration Act except to the extent its applicability has been excluded by the express provision contained in Section 34(3) of the Arbitration Act. Accordingly, SC dismissed the appeal.

State Of Rajasthan & Anr v. Godhara Construction Company

High Court of Rajasthan I SB Civil Miscellaneous Appeal No. 511/2009

Background facts

- A work contract was given to the Respondents for renewal work of paver and hot mix plant in 14 km length in between Kms. 100 to 149 (in Kms. 101/0 to 104/0, 132/0 to 136/0, 141/0 to 146/0 to 149/0) on Agra Road, NH-11 for which Agreement No. 26, year 1993-94 was executed between the parties. During the progress of the said work, disputes arose between the parties and the Respondent submitted an application before the District Judge under Section 10 and 11 of the Arbitration and Conciliation Act, 1996 (**Act**) and the District Judge further appointed the Arbitrator vide order dated August 28, 1998.
- Thereafter, the Arbitrator passed an award of INR 4,33,161.79 with interest @ 18% from April 25, 1997 till its actual payment vide award dated July 29, 2000 in favor of the Respondent.
- When the award was not satisfied, the Respondents submitted an application before the Court of District Judge, Jaipur for passing a decree in terms of the award dated July 29, 2000. Notices were issued and the State (**Appellant**) submitted its objection on February 22, 2001 by filing reply to the application. Since there was delay in filing objections, an application under Section 5 of the Limitation Act, 1963 was submitted for condoning the delay.
- The Add. District Judge rejected the objections vide impugned order dated August 30, 2008 by holding that the objections were not filed within the period of limitation prescribed under Section 34(3) of Act and the same cannot be decided on merits as the same were beyond limitation.
- Aggrieved by the same, the instant miscellaneous appeal has been preferred by the State of Rajasthan.
- **Submissions of the Appellants:**
  - The copy of the award was not made available to the officer-in-charge of the Appellant by the Arbitrator. Due to the same, delay has occurred in filing the objections but the Court has committed an illegality in rejecting the objections by treating the same as time-barred.
- **Submissions of the Respondents:**
  - The matter was contested by the Appellant before the Arbitrator and the Arbitrator passed the award on July 29, 2000 after hearing both sides and a copy of the award was forwarded to the Chief Engineer, PWD (National Highway), Jaipur.
  - The Appellant was well aware about the passing of the award, as they have participated in the entire arbitral proceedings. Further the objections submitted now, beyond the prescribed period of limitation contained under Section 34(3) of the Act, were not maintainable in the light of Apex Court's decision of ***Union of India v. Popular Construction Co***[9].

Issue at hand?

- Whether the objection petition filed under Section 34 of the Act was within the period of limitation provided and if not, whether the delay is condonable by exercise of power under Section 5 of Limitation Act, 1963?

Decision of the Court

[8] (2012) 2 SCC 624
[9] 2001 (3) Arb. LR 345 (SC)

- The Court discussed the applicable legal provisions and the Judgement in the case of Union of India v. Popular Construction Co (supra) and held that time-limit prescribed under Section 34 to challenge an award is absolute and unextendible by Court under Section 5 of the Limitation Act, 1963.
- It was opined by the Court that the sub-Section (2) of Section 34 of the Act provides for the grounds for setting aside an award which are not relevant in instant matter. However, it also means that an application filed beyond the period mentioned in Section 34(3) of the Act would not be an application 'in accordance with' that sub-Section. Based on the same, by virtue of Section 34(1), recourse to the Court against an arbitral award cannot be made beyond the period prescribed.
- The Court noted that the Trial Court has taken all these facts into consideration and rightly rejected the objections raised by the Appellant-State of Rajasthan by treating the same as beyond limitation.
- Further the Court held that proviso to Section 34(3) of the Act empowers the Court if it is satisfied that the applicant was prevented by sufficient cause from making application within the said period of three months to further extend the period and filing of the application for setting aside the arbitral award by 30 days but not thereafter and the proceedings contained in Limitation Act, 1963 do not apply to proceedings under Section 34 of the Act.

HSA
Viewpoint

The Court has rightly held that the provision of Section 5 of the Indian Limitation Act, 1963 does not apply to the proceedings under Section 34 of the Arbitration and Conciliation Act, 1996 and a delay beyond the permissible period, as provided in Section 34 of the Arbitration and Conciliation Act, 1996, is not condonable under Limitation Act, 1963.

Smt NR Indira v. The State of Telangana & 3 Ors

Telangana High Court I WP No. 1034 of 2021

Background facts

- The Petitioner was working as a Record Assistant in the office of Respondent No. 2 and retired from service on July 31, 2020 on attaining the age of superannuation.
- No departmental enquiry was made at the time of retirement which led to filing of an application for payment of her retirement benefits including gratuity, surrender, GIS and pension to the office of Respondent No. 2, but the same were not released even after five months of her retirement.
- The Petitioner subsequently came to know that one Sreenilaya Chit Fund Pvt Ltd and Margadarsi Chit Fund Pvt Ltd, have filed recovery suits respectively against the respective defaulters therein and the Petitioner herein as she stood as a guarantor/surety to the said loan transactions and further, that the Civil Court had issued directions to Respondent No. 2 to withhold the salary, leave encashment and other benefits of the Petitioner which are not covered under Section 60 of Code of Civil Procedure, 1908 (**CPC**).
- A Writ Petition is filed since the Petitioner had planned to perform her daughter's marriage with pension benefits and the same was not released by the office of the Respondent No. 2.
- **Submissions of the Petitioner:**
  - The Petitioner never received any notice with regard to the suits or the Execution Petitions (**E.P.**) filed by the Chit Fund Companies.
  - E.P. No. 306 of 2019 was filed long back and other E.P. No. 215 of 2020 was filed after the retirement of the Petitioner and the Respondent No. 2 has failed to verify the same.
  - The direction of the Civil Court was to withhold salary, leave encashment and other benefits, which are not covered by Section 60 of CPC, but Respondent No. 2, by acting in a mechanical manner, has withheld the pension, gratuity, surrenders, GIS and other pensionary benefits, which is otherwise not permissible under law either as per Section 60 of the CPC or under Section 11 of the Pensions Act, 1871 and Section 13 of the Payment of Gratuity Act, 1972.
  - Reliance was placed upon Circular Memo dated December 24, 2016, by which the Government of Telangana has assured that all the pensionary benefits of the employees should be paid on the day of retirement and therefore, the Respondents ought to have paid the pensionary benefits on the date of retirement and they have failed to comply with the directives of the said Circular.
  - Reliance was placed upon an earlier decision of the High Court wherein it was held that pension and gratuity amounts cannot be attached for satisfaction of any decree of the Court under provision (g) to Section 60(1) of the CPC.
- **Submissions of the Government Pleader:**
  - The Petitioner retired from service on July 31, 2020 on attaining the age of superannuation and has submitted papers for payment of retirement benefits, which were withheld due to receipt of order of the Civil Court dated August 04, 2020.
  - The Petitioner herself has admitted about these two orders of the Civil Court in the E.Ps., and in view of the said orders, Respondent No. 2 could not pay the pensionary benefits to

the Petitioner and is also due to pay House Building Advance (**HBA**) and House Building Repairs Advance amounting to a sum of INR 2,07,000, apart from sum of INR 8,11,581 due under above E.Ps.

- Thus, the office of Respondent No. 2 has not processed the pension proposals temporarily and the pensionary benefits were not paid to the Petitioner.

- **Submissions of the Respondent:**
  - In view of the directions of the Court, Accountant General (A&E), Telangana, Hyderabad withheld a sum of INR 5,04,888 for gratuity and the remaining balance pensionary benefits had been released.

Issue at hand?

- Whether the pension and gratuity amount of a retired employee can be attached for satisfaction of a decree of any Court?

Decision of the Authority

- Vide orders dated March 25, 2021, the Court has observed that Respondent No. 2 was required to withhold only a sum of INR 10,20,000 as the amount due from the Petitioner and the balance amount was directed to be paid to the Petitioner.
- Provisions of Clause (g) to Section 60(1) of CPC looked upon and it is observed that under the said provision, the pension and gratuity amounts of a retired employee cannot be attached for satisfaction of a decree of any Court.
- Reliance was placed on ***Radhey Shyam Gupta v. Punjab National Bank***[10] wherein it was held that the pension and gratuity cannot be attached and cannot be withheld for appropriation of a decree of any Civil Court.
- The Court partly allowed the writ petition and directed Respondent No. 2 to pay the entire amount of pension and gratuity to the Petitioner within a period of two months while clarifying that the payment towards encashment of leave was not exempted from attachment and therefore, the Petitioner was not entitled for the said payment.

HSA
Viewpoint

The judgment reiterated the settled legal position that the pension and gratuity amount of a retired employee cannot be attached for satisfaction of a decree of any Court and thereby the protection granted in terms of the retirement benefits has been affirmed.

Salim Alimohomed Porbanderwalla & Anr v. The State of Maharashtra & Anr

Bombay High Court | 2023 SCC Online Bom 731

Background facts

- The Urban Land (Ceiling and Regulation) (**ULC**) Act, 1976 was first enacted by Parliament of India in the year 1976 with the objective of providing for the imposition of a ceiling on vacant land in urban agglomerations, for the acquisition of such land in excess of the ceiling limit, to regulate the construction of buildings on such land and for matters connected therewith, with a view to preventing the concentration of urban land in the hands of a few persons and bringing about an equitable distribution of land in urban agglomerations to subserve the common good.
- However, the ULC Act, failed to achieve its objectives owing to which the Parliament repealed the ULC Act by the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (**Repeal Act**), which was adopted by Maharashtra State Legislature on November 29, 2007.
- Section 3 of the Repeal Act had a saving clause which stated that the repeal would not affect the following:
  - Vesting of any land of which possession had been taken by the State Government
  - Validity of any exemption order under Section 20(1) or any action thereunder
  - Any payment made to the State Government as a condition for granting a Section 20(1) exemption
- On September 3, 2014, a full bench of Bombay High Court (**BHC**) considered the effect of Repeal Act in ***Maharashtra Chamber of Housing Industry & Ors v. State of Maharashtra & Anr***[11] which was challenged before the Supreme Court of India (**SC**).
- During the pendency of the Appeal, the State Government appointed a committee under the chairmanship of Mr. Justice BN Srikrishna (as he then was) and this committee proposed that the issue of exemption orders under Section 20 could and should be closed by accepting certain payment which was ratified by SC by virtue of order dated July 2, 2019 in a Civil Appeal. This led to the issuance of two Government Resolutions dated August 1, 2019 and June 23, 2021 (**GRs**) which inter alia stated that upon payment of one-time premium amount in respect of the entire area

[10] (2009) 1 SCC 376
[11] Civil Appeal No. 558 of 2017

exempted under Section 20 exemption order, the remark of ULC would be deleted from the revenue records for the properties concerned.

- The BHC finally settled the ULC Premium conundrum in Maharashtra by virtue of recent judgement dated March 30, 2023 in the matter of ***Salim Alimahomed Porbanderwalla & Anr v. The State of Maharashtra & Anr***[12].
- A Writ Petition bearing No. 4849 of 2022 was filed by the Petitioners who were in possession of land bearing C.T.S. Nos. 124 and 125 aggregating to an area of 12025.25 square meters of Village Marol, Taluka Andheri. In this matter, Respondent No. 1 was the State of Maharashtra and Respondent No. 2 was the Additional Collector and Competent Authority.
- The land in question before the BHC admeasured an area of 5387.17 square meters as surplus vacant land and about 2990.23 square meters as retainable land which was within the ceiling limit under the ULC Act.
- The Petitioners, in order to avail the benefits of the scheme as notified in the GRs, requested for computation of premium, to which the Competent Authority demanded an amount of INR 515,40,741 against an area of 5271.75 square meters. However, in doing so, the Competent Authority left an area of 115.42 square meters (which together would have made up 5387.17 square meters).
- However, the Petitioners, as per the demands of the Competent Authority, made a complete payment of premium to the Treasury towards the surplus vacant land. Pursuant to which the Petitioners anticipated the removal of the entry of the Section 20 ULC order from the revenue records. However, despite making the payment against balance area of 115.42 square meters, the entries in the records of rights and other records regarding the entire property as being affected by the ULC order continued to remain in force.

Issue at hand?

- Whether the Petitioners are liable to pay premium only on the surplus vacant land or towards the entire land which includes the retainable land and the surplus vacant land as demanded by the Respondents/Government/Land Competent Authorities?

Decision of the Court

- The BHC concurred on the submission made by the Counsel appearing on behalf of the Petitioners that the expression 'entire land' shall mean the whole of the surplus vacant land and not the whole of the land. Counsel appearing on behalf of the Petitioners also submitted that the mischief should be avoided is the interpretation of taking bits and pieces of the term surplus vacant land and failing to implement a scheme on the surplus vacant land.
- The BHC noted that the Government Regulation using the term 'entire land' shall not mean the retainable land belonging to the Petitioners already exempted under the Act. It in fact means the surplus vacant land for which the Petitioner has already paid the full premium. Therefore, the Petitioners were entitled to have the revenue entry deleted.
- The BHC heavily relied on the decision of the five-judge bench of the Supreme Court in ***Maharao Sahib Shri Bhim Singhji v. Union of India & Ors***[13] which held the Section 27(1) of the ULC Act ultra vires, unconstitutional and in violation of Article 14 of the Constitution and was, therefore, struck down.
- Accordingly, the BHC eventually quashed and set aside the impugned letter dated April 22, 2022 addressed by the Respondents to the Petitioners stating that the entries in the Records of Rights shall remain unchanged and shall continue to reflect Section 20 of the ULC.
- The BHC thereafter directed the Respondents to remove all entries under the ULC Act for the surplus vacant land since the Petitioners had paid the premium to treat their land as free of all conditions stipulated by the exemption order under Section 20 of the ULC Act.

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Viewpoint

The judgment has cleared the confusion that was created with respect to the term 'entire land'. The clarification provided by the BHC that the premium amount is only to be paid on the surplus vacant land and not the whole land has led to elimination of ambiguity and doubt, and reduced the scope of litigation by people who could be directed to pay premium on the entire land. It may be worthwhile to consider whether landowners and developers can claim refunds for premiums they have already paid for land that is not considered surplus and vacant.

[12] Writ Petition No. 4849 of 2022
[13] 1986 SCC (4) 615

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