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MONTHLY NEWSLETTER

SEPTEMBER 2021

DEFENDANT'S RIGHT TO SEEK INTERIM INJUNCTION: WHETHER THE RIGHT UNDER ORDER XXXIX RULE 1 WORKS AS A REMEDY TO THIS QUERY?

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INTRODUCTION

The Supreme Court of India (**"SC"**) recently issued a notice in a special leave petition filed before it in ***Taminedi Ramakrishna Etc. v. N. Jayalakshmi ("Taminedi")***[1], wherein the issue of whether a defendant can seek injunction in a suit filed by the plaintiff under Order XXXIX Rule 1 of the Code of Civil Procedure,1908 **("CPC")** which provides for interim injunctions was raised. The idea behind interim injunction is to essentially preserve the subject matter of the dispute so that due to the continuing wrongful act of one of the parties, the property is not damaged or alienated in a manner so as to render the decree passed in favour of the applicant, to merely a paper decree. There may be situations wherein the property in a suit is at peril due to the acts of the plaintiff or in case of a vexatious suit, the plaintiff is intending to wrongfully deprive the defendant's right in the property.

In such circumstances, the provision of, Order XXXIX of the CPC maybe invoked by the defendant to protect its interest and to secure an interim relief from the court. This article will delve into the principle of Order XXXIX, the principle and the jurisprudence evolved by the Courts, the aim of CPC *vis-à-vis* the defendant's right to seek the remedy of interim injunction, the inherent power of the Court under Section 151 of the CPC to grant an injunction for meeting the ends of justice and conclude on the terms of the recent issue before the SC and what the SC may decide.

ORDER XXXIX OF CPC: THE PRINCIPLE EVOLVED

The principle of Order XXXIX of the CPC is to empower the Courts to preserve the subject matter of the litigation by issuing certain forms of relief in order to preserve the property in dispute till the legal rights and conflicting claims of the parties before the Court are adjudicated.

ABOUT THE FIRM

AKS Partners (formerly known as A.K. Singh & Co) is a law firm based in New Delhi (India) that provides a comprehensive range of legal services and solutions to domestic and international clients. The Firm offers a unique blend of the local knowledge to apply the regulatory, economic, political and cultural context to legal issues and develop case strategies. We regularly handle technically challenging and complex multi-jurisdictional matters. Our team is spearheaded by one of the highly recognised lawyers with extensive experience in international dispute resolution and strong government and diplomatic backgrounds. This experience gives us the deepest understanding of the key decision points that are critical in navigating complex & complicated matters and managing government regulations.

Time and again, the judiciary has come up with its interpretation of the principle revolving around the issue of the interim injunction but the views and approach of the various High Courts including the SC are different when it comes to granting an interim injunction to defendants.

In the case of ***Nanasaheb v. Dattu*** [2], the Bombay High Court while dealing with the right of the defendant to seek the interim injunction under Order XXXIX and the Court's inherent power to issue injunction observed that as far as the circumstances are covered under Order XXXIX, the injunction will be granted as per the same mandate and in situations which are outside the scope of Order XXXIX, the Courts will have every right to use its inherent power to meet the ends of justice.

In the case of ***Shiv Ram Singh v. Smt. Mangara***,[3] the Allahabad High Court after considering the SC judgment of ***Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal("Manohar Lal")***, [4] observed that Section 94 of the CPC does not expressly prohibit the grant of temporary injunctions in circumstances which are not covered under Order XXXIX.

Accordingly the court held that if the defendant's case is not covered under Order XXXIX Rule 1, then the Court may grant an interim injunction using its inherent power cautiously. Such caution is to be exercised in circumstances when the court is satisfied that without the grant of injunction being sought, the property in the suit will be altered or damaged or any such compelling circumstances which may arise during the course of the pendency of the suit.

The question which now arises is on what terms can the interim injunction be granted to the defendant. To answer this query and to solve the conundrum, the Karnataka High Court ("**KHC**") in the case of ***Suganda Bai v. Sulu Bai ("Suganda Bai")***,[5] held that defendant can maintain an application for an interim injunction in a suit filed by the plaintiff, where the defendant's claim of relief arises out of the plaintiff's cause of action or is incidental to it. This judgment was overruled by a subsequent judgment of the KHC in ***Shakunthalamma v. Kanthamma ("Shakunthalamma"),*** [6] wherein the full bench of the KHC overruled Suganda Bai and held that it will be contrary to provisions of CPC to hold that a defendant can maintain an application for interim injunction on plaintiff's cause of action as the decision rendered in Suganda Bai did not interpret Order XXXIX, Rules 1 and 2 of CPC and secondly, the Rule 1(c) of Order XXXIX was not in the statute book as on the date of judgment.

Interestingly, despite the observation in Shakunthalamma, the reasoning given in *Suganda Bai* is still referred to by various High Courts. In a recent judgment, [7] the Himachal Pradesh High Court emphasized the same point as enshrined in *Suganda Bai* and held that defendant can maintain an application for an interim injunction by invoking inherent jurisdiction of the court if the defendant's claim of relief arises out of the plaintiff's cause of action.

A similar issue was raised before the Calcutta High Court wherein the defendant raised a plea for an interim injunction. The High Court in that particular instance referred to the judgment of Suganda Bai and held that as the defendant's claim is incidental to that of the plaintiff's relief, the defendant can rightfully seek an interim injunction.[8]

The relief sought under Order XXXIX has to be construed widely as it empowers the court to retain the subject matter of the litigation. KHCin the case of ***Vincent v. Aisumma,*** [9] while dealing with the same question of law observed that the relief sought under Order XXXIX Rule 2 is limited to the plaintiff only but Rules 1 and 3 are wider and both i.e. the plaintiff as well as the defendant can avail the remedies under Order XXXIX. The difference in opinion of the High Courts have made the remedy for the defendant under seeking injunction Order XXXIX of the CPC an uphill task and the same should be looked into with utmost sincerity as there lies a matter not only pertaining to statutory rights but also the fundamental right to seek justice.

INTERPLAY BETWEEN THE SCHEME OF THE CPC AND DEFENDANT'S RIGHT TO SEEK INJUNCTION

The underlying objective of CPC has been to resolve disputes pertaining to one subject matter in a single suit. This not only saves the time of the court & litigant but is in the interest of the common citizenry. The Latin maxim *"Interest republicaeut sit finis litium"* means that it is in the interest of the state that there should be an end to litigation. The CPC makes an endeavour to uphold the principles of this maxim. Order VIII is one such example that seeks to reduce multiplicity of litigation. Order VIII provides for the counterclaim, set-offs which are essentially situations wherein the defendant is seeking remedy against the plaintiff in the same suit. Rules 6 and 6A of Order VIII essentially allow the defendant to seek remedies against the plaintiff and with respect to such remedies, the defendant actually assumes the position of a plaintiff. The intent behind providing the defendant with such remedies is to avoid multiplicity of proceedings which otherwise could have let to institution of a new suit by the defendant for seeking remedies, if any against the plaintiff.

The above view was expressed by the Jharkhand High Court in the case of ***Praveen Kumar Sukhani v. Bishwanath Mahto,*** [10] wherein the court in order to ensure that multiplicity of suits are avoided, permitted a counter-claim for a cause of action which arose after filing of the suit. In this case, the court interpreted Order VIII Rule 6A, to further avoid multiplicity of the suit.

Recently, the SC also emphasized the principle of reducing the multiplicity of the proceedings. In ***Rahul S. Shah v. Jinendra Kumar Gandhi***, [11] the SC observed that the scheme of the CPC is to cover all the questions that may arise in a suit that must be decided in a single trial only.

Thus in case it is to be inferred that a defendant is barred from seeking an injunction under Order XXXIX, then the only remedy that the defendant is left with is to institute a separate suit for the remedy to which he is entitled to, which in turn will be a cumbersome process and shall also be against the notions of justice.

INHERENT POWER OF THE COURTS U/S 151 TO GRANT AN INJUNCTION

Section 151 of the CPC deals with the inherent powers of the court to grant certain reliefs as and when required and sought by the parties. It empowers the court, as it deems important for the ends of justice to meet, to pass an order to limit abuse of power and protect the interest of the parties therein.

Additionally, the court can even pass orders for which no specific remedy is provided under the CPC but which it *prima facie* deems fit to fill the lacunae and to ensure that the affected party is protected by such an order.

However, such powers should be used cautiously and the courts cannot overlook the mandate of the CPC in a manner that is inconsistent with the powers expressly or impliedly conferred by other provisions of CPC. [12]

The legislature has used the words *"abuse of power"* and *"ends of justice"* very cautiously as they have a very wide connotation. The Calcutta High Court in the case of ***Debendra Nath Dutt v. Satyabala Dasi***,[13] while interpreting the term "ends of justice" observed that the words used do not refer to just the indeterminate notion of justice but justice according to the statutes and laws of the land.

But the question here is whether the Courts can grant interim injunction while exercising the inherent powers under Section 151 of the CPC. The answer to this query was sought in the case of ***Manohar Lal Chopra***, wherein the SC on aconjoint reading of the Order XXXIX Rule 1 and Section 151 of the CPC held the following:

"There is nothing in Order XXXIX, rules 1 and 2, which provide specifically that a temporary injunction is not to be issued in cases which are not mentioned in those rules. The rules only provide that in circumstances mentioned in them the Court may grant a temporary injunction."

Similarly, the Patna High Court in the case of ***Indrawati Devi v. Bulu Ghosh*** [14] held that Courts can issue temporary injunction by using their inherent power and that can even cover the situations which are not covered under Order XXXIX Rules 1 & 2 of the CPC.

In ***Padam Sen v. State of Uttar Pradesh***, [15] the SC dealt with the issue pertaining to inherent power of the courts under Section of CPC, held that the powers of the Court under Section 151 are in addition to the powers specifically conferred under CPC.
Therefore, in view of the above discussion, it is clear that courts can use this inherent power in exceptional circumstances in order to grant relief and protect the interest of the parties provided those exceptional circumstances are in tune with the interest of justice.

CONCLUSION

The issue in hand is sub-judice now and the SC in *Taminedi*, shall decide the issue once and for all. However, it is evident from the above discussion that the defendant may seek an interim injunction under Rule 1(a) of Order XXXIX. However, no remedy is available to them under sub rule (b) and (c) as the same categorically provides remedy solely to the plaintiff. The SC and the High Courts have also emphasized using the inherent power under Section 151 of CPC while granting interim injunction but have cautioned about the limitations to be kept in mind while exercising the inherent powers under Section 151 of the CPC.

In the authors' opinion, if such injunction is not available to the defendant in a suit then the defendant shall be persuaded to seek a remedy by filing a separate suit which shall lead to multiplicity of proceedings and may defeat the objectives under the CPC. Further, the Rules under Order XXXIX have to be

considered in entirety and cannot be read in isolation while interpreting whether a defendant may also have the right to seek an injunction under the said provision.

REFERENCES

[1] Special Leave Petition No. 12678/12679 of 2021.
[2] Nanasaheb v. Dattu, AIR 1992 Bom. 24.
[3] Shiv Ram Singh v. Smt. Mangara, 1985 ALJ 1516 (All.).
[4] Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal, AIR 1962 SC 527.
[5] Suganda Bai v. Sulu Bai, AIR 1975 Kar. 137.
[6] Shakunthlamma v. Kanthamma, AIR 2015 Kant. 13.
[7] The Himachal Pradesh State Electricity Board Limited v. Valecha Engineering Limited, 2020 SCC OnLine HP 4041.
[8] Dr. Ashish RanjanDass v. RajendraNathMullick,AIR 1982 Cal. 529.
[9] Vincent v. Aisumma, AIR 1989 Ker. 81.
[10] Praveen Kumar Sukhani v. BishwanathMahto, AIR 2006 Jhar 1.
[11] Rahul S. Shah v. Jinendra Kumar Gandhi, AIR 2021 SC 2161.
[12] M/s Ram Chand & Sons Sugar Mills Pvt. Ltd. v. Kanhayalal Bhargava, AIR 1966 SC 1899.
[13] DebendraNathDutt v. SatyabalaDasi, AIR 1950 Cal. 217.
[14] Indrawati Devi v. Bulu Ghosh, AIR 1990 Pat. 1.
[15] Padam Sen v. State of Uttar Pradesh, AIR 1961 SC 218.

NEWS AND UPDATES

DOMESTIC ARBITRATION

EVERY ERROR, IN THE APPLICATION OF A STATUTE, OR APPRECIATION OF FACTS OR EVIDENCE BY THE ARBITRATOR CANNOT BE CLOTHED AS PATENT ILLEGALITY:

The Supreme Court of India ("SCI") in Delhi Airport Metro Express Pvt. Ltd. v. Delhi Metro Rail Corporation Ltd., while reiterating its ratio laid down in Ssangyong Engineering and Construction Co. Ltd. v. National Highway Authority of India, examined an application under Section 34 of the Arbitration and Conciliation Act, 1996 ("Arbitration Act") and held that the court has very limited scope for interference i.e. if the award suffers from patent illegality which goes to the root of the matter,or if it is against the fundamental policy of Indian law,or if arrived at in ignorance of any vital evidence or without any evidence,or if based on no reason. The SCI observed that the practice of courts of dissecting and reassessing factual aspects of the cases and thereafter concluding that the award suffers from patent illegality or perversity is disturbing. Such an approach would defeat the purpose of the Arbitration Act, and thus the courts should strictly examine the award in accordance with the law of minimal judicial interference as has been laid down.

SECTION 9(3) OF THE ARBITRATION ACT DOESN'T BAR AN APPLICATION UNDER SECTION 9(1) WHICH IS ALREADY IN CONSIDERATION BEFORE A COURT:

The SCI in Arcelor Mittal Nippon Steel India Ltd. v. Essar Bulk Terminal Ltd., held that Section 9(3) of Arbitration Act, does not bar an application under Section 9(1) of the Arbitration Act, if the said application has been entertained and taken into consideration by the court before constitution of the arbitral tribunal. When an application has already been taken up for consideration and is in the process of consideration or has already been considered, the question of whether a remedy under Section 17 is efficacious or not would arise. The SCI further observed that it could never have been the legislative intent that even after an application under Section 9 is finally heard, relief would have to be declined and the parties are remitted to their

RECENT UPDATE

Mr. Sonal Kumar Singh has been conferred as an exclusive ***Dispute Resolution Law Expert*** and ***Mr. Anish Jaipuriar*** has been conferred as an exclusive ***Commercial Law Expert*** in India by ***Global Law Experts***.

AKS Partners has been ranked as ***Other Notable Firm*** for ***Dispute Resolution*** and ***Corporate M&A Firm*** by ***Asialaw Profiles 2022***

remedy under Section 17. If such an application which is already in the process of consideration is remitted to the Tribunal, it may result in the delay of the interim relief, such delay would be contrary to the basic notion of interim relief of preserving the subject matter of dispute.

WRIT PETITION IS MAINTAINABLE AGAINST THE ORDER PASSED BY THE COURT UNDER SECTION 36 OF THE ARBITRATION ACT:

The Bombay High Court ("BHC") in State of Maharashtra &Anr v. Jaykumar Fulchand Ajmera held that the writ petition is maintainable against an order of the District Court directing the Petitioner/ State Government to deposit 60% of the award amount while staying the award under Section 36 of the Arbitration Act. The Respondent objected to the maintainability of the writ petition on the ground that since the impugned order has been passed by the commercial court under the Commercial Courts Act, 1915 ("CC Act"),an appeal would only lie before a commercial appellate division. The contention was rejected by the BHC and it was held that an order arising out of Section 36 of the Arbitration Act, does not contain any provision for appeal and accordingly Section 13 of the CC Act would be inapplicable.

THE ARBITRAL TRIBUNAL CAN DENY NORMATIVE DAMAGES IF NO ACTUAL DAMAGES ARE PROVED:

The Delhi High Court ("DHC") in M/s Siddharth Constructions Co. v. India Tourism Development Corporation Ltd., held that when the agreement provides for normative compensation on overhead charges and other damages, the denial of claims against these damages would not be patently illegal if denied by the Arbitral Tribunal on account of failure to produce evidence establishing actual damages. There is no principle of law that mandates that damages must be allowed on a normative basis in all cases and the question as to whether the petitioner has sufficiently established that it had incurred any loss or damage is a question of fact and the Arbitral Tribunal's decision in this regard is final.

THE ARBITRATOR'S VIEW ON FACTS IN AN AWARD CANNOT BE QUESTIONED IF NOT IN ACCORDANCE WITH THE COURTS' DISCRETIONARY VIEW OF THE FACTS:

The DHC in Union of India and Anr. V. M/s Annavaram Concrete Pvt Ltd., in an appeal, under Section 13 of the CC Act read with Section 37 of the Arbitration Act held that so long as the award of an arbitrator is based on facts it is irrelevant whether the court would have taken the same view or not unless it is not in violation of law, public policy, morality prevailing in India. The DHC stated so long as the view taken by an arbitrator, which in this case has also been upheld by the learned single Judge, is a possible view based on facts, it is irrelevant whether this court would or would not have taken the same view on the merits of the matter and the arbitral award is required to be upheld.

ARBITRAL TRIBUNAL CANNOT BE CONSTITUTED UNDER SECTION 11 IF THE CLAIMS OF THE DISPUTE HAVE ALREADY BEEN ADJUDICATED UPON BY AN ARBITRAL TRIBUNAL:

The Calcutta High Court in Tantia Construction Limited v. Union of India while dismissing an application under Section 11 of the Arbitration Act for appointment of arbitrator held that when the disputes sought to be raised has already been adjudicated upon by the Arbitrator, it cannot be said to be a subsisting dispute which requires resolution.

INTERNATIONAL ARBITRATION

ENERGY CHARTER TREATY (ECT) BASED INTRA-EUROPEAN UNION ARBITRATIONS ARE CONTRARY TO EU LAW:

The Court of Justice of the European Union (CJEU) ruled in the case of Republic of Moldova v. Komstroy LLC, that the Investor-State Dispute Settlement mechanism provided for by the ECT [Article 26(2)(c)] is not applicable to intra-EU disputes. In the same decision, it also decided that the acquisition of a claim arising from an electricity supply contract does not constitute an 'investment' under Articles 1(6) and 26(1) ECT. The CJEU answered that the acquisition of a claim arising out of a simple contract for the sale of electricity cannot, in itself, be regarded as aiming at undertaking an economic activity in the energy sector as per Article 1(6)(f) ECT and the claim does not arise from a contract connected with an investment under Article 1(6)(c) ECT as the contractual relationship concerned only the supply of electricity, a commercial transaction which cannot, in itself, constitute an investment.

IBC

EXERCISE OF RESIDUARY POWERS BY ADJUDICATING AUTHORITY UNDER SECTION 60(5)(C) SHALL BE DONE SPARINGLY AND NOT IN CONTRARY TO THE CORE OBJECTIVE OF INSOLVENCY AND BANKRUPTCY CODE, 2016 ("IBC"):

The SCI in Ebix Singapore Private Limited v. Committee of Creditors of Educomp Solutions Limited & Anr., held that any claim seeking the exercise of the Adjudicating Authority's residuary powers under Section 60(5)(c) of the IBC or even the powers of the SCI under Article 142 of Constitutionof India ("Constitution") must be examined keeping in view the framework and underlying objective of the insolvency proceeding. The role of adjudicating mechanism has been narrowly given in the IBC and timelines are the central idea of IBC. Any judicial creation of a procedural and substantive remedy not envisaged by the statute should not be done as it would violate the principle of separation of power as well as will have a grave implication on the outcome of the CIRP. On these lines,the SCI further held that permitting Adjudicating Authority to exercise its residuary powers under Section 60(5) cannot be allowed for further modifications or withdrawals of Resolution Plan submitted at the behest of the successful Resolution Applicant.

IN ABSENCE OF STATUTORY PROVISION, NATIONAL COMPANY LAW APPELLATE TRIBUNAL ("NCLAT") CANNOT CONDONE A DELAY OF MORE THAN 15 DAYS:

The SCI in National Spot Exchange Limited v. Mr. Anil Kohli, Resolution Professional Dunar Foods Limited, held that as per Section 61(2) of the IBC, an appeal before the NCLAT shall be preferred within 30 days from the date of order of National Company Law Tribunal ("NCLT"). The NCLAT if satisfied with the reasons can condone a delay of up to 15 days. The SCI observed that there can be a situation wherein the applicant/appellant may not be in a position to file the appeal even within a statutory period owing to genuine reasons or hardships faced, and such delay may be condoned. However, since the Parliament has not craved any exception in this regard then the Court cannot carve out an exception under Article 142 of the Constitution.

CORPORATE UPDATES

RESERVE BANK OF INDIA ISSUED THE MASTER DIRECTION – RESERVE BANK OF INDIA (MARKET-MAKERS IN OTC DERIVATIVES) DIRECTIONS, 2021 :

The RBI has in exercise of the powers conferred under Section 45W of the Reserve Bank of India Act, 1934 read with Section 45U of the Act, issued the Master Direction - Reserve Bank of India (Market-makers in OTC Derivatives) Directions, 2021. The Master Directions shall regulate the entities that are permitted to act as market-maker in OTC derivatives in terms of the Governing Directions. Compliances of such entities include specific obligations to be fulfilled by the Board of Directors, mandatory new diligence for new products, documentation of pricing and valuation, etc.

SEBI INTRODUCES RISK MANAGEMENT FRAMEWORK FOR MUTUAL FUNDS:

In order to ensure operations and to protect the interests of investors, SEBI had prescribed certain systems, procedures and practices that must be followed by all mutual funds with regard to risk management in various areas like fund management, operations, customer service, marketing and distribution, disaster recovery and business contingency, etc. With the overall objective of management of key risks involved in mutual fund operation, the revised Risk Management Framework (RMF) shall provide a set of principles or standards, which inter alia comprise the policies, procedures, risk management functions and roles & responsibilities of the management, the Board of AMC and the Board of Trustees.

RBI INVITES COMMENTS ON DRAFT FOREIGN EXCHANGE MANAGEMENT (NON-DEBT INSTRUMENTS – OVERSEAS INVESTMENT) RULES, 2021 (DRAFT RULES) AND THE FOREIGN EXCHANGE MANAGEMENT (OVERSEAS INVESTMENT) REGULATIONS, 2021 (DRAFT REGULATIONS):

The RBI has invited comments from stakeholders on the Draft Rules and Draft Reguations. While the Draft Rules deal with overseas investment in equity and immovable property, the Draft Regulations deal with overseas financial commitment by debt and guarantee and other miscellaneous matters. The Draft Rules and Regulations introduce several procedural and conceptual changes, which are expected to rationalise the regulatory regime and improve the ease of doing business.

PARTIES TO COMBINATION CAN ALSO SUGGEST MODIFICATIONS TO REDUCE THE APPRECIABLE ADVERSE EFFECT OF COMBINATION IN THE INDIAN MARKET:

The SCI in Eaton Power Quality Pvt. Ltd. v. Competition Commission of India & Ors., while examining the scope of Competition Act, 2002 ("Competition Act") observed that fundamental objectives of this legislation are to ensure that there is free trade and fair competition. The SCI further stated that the object of the Competition Act is to remedy and provide for the measure if any practices will have an appreciable adverse effect on competition in the markets in India. In light of these observations, the SCI held that even parties to a combination can also suggest modifications under Section 31 of the Competition Act to ensure that appreciable adverse effect on competition is reduced.

STATUTORY ROYALTY CANNOT BE EQUATED TO TAX WHEREBY COMPULSION IS IMPOSED BY LAW ON THE TAXPAYER:

The SCI in M/s. Indsil Hydro Power and Maganee Limited v. State of Kerala and Ors., held that royalty in an agreement has been consistently construed to be compensation paid for the rights and privileges enjoyed by the grantee and normally it stems out of the agreement between grantor and grantee. On the other hand, tax is imposed under statutory power without any reference to any special benefit to be conferred on the taxpayer. The royalty is in terms of the agreement between the parties and normally has a direct relationship with the benefit or privilege conferred upon the grantee. Thus even though a statute provides for royalty to be paid to the government or its undertaking, it cannot be equated to tax.

INDIA LAUNCHES ACCOUNT AGGREGATOR TO EXTEND FINANCIAL SERVICES TO MILLIONS:

The Reserve Bank of India ("RBI") launched the Account Aggregator (AA) Framework on September 2, 2021 with eight major banks joining the network. It includes State Bank of India (SBI), ICICI Bank, Axis Bank, IDFC First Bank, Kotak Mahindra Bank, HDFC Bank, IndusInd Bank, and Federal Bank. These banks have joined the network as Financial Information Providers (FIPs) and Financial Information Users (FIUs). Together, these banks cover nearly 40% of India's banking customers. In September 2016, the RBI had proposed setting up an account aggregator that would act as a common platform that captures all your financial details in one place. The account aggregator will help individuals share their financial data with third parties safely and securely, and give them greater control over how their data is being used. Consumers using the AA financial utility will benefit not only from the ease of access to data but also from a greater choice of products, better pricing, and increased financial inclusion.

RBI ISSUED MASTER DIRECTIONS ON PREPAID PAYMENT INSTRUMENTS ("PPI"):

Pursuant to recent updates to PPI guidelines, it has been decided to issue the Master Directions pertaining to PPI afresh. The Master Directions classify PPIs into two categories – small PPIs and full Know Your Customer ("KYC") PPIs. They were earlier classified as closed systems, semi-closed systems and open system PPIs. Small PPIs are issued by banks and non-banks after obtaining minimum details of the PPI holder. They shall be used only for the purchase of goods and services and funds transfer or cash withdrawal from such PPIs shall not be permitted. Small PPIs can have cash upto ₹10,000 loaded per month, not exceeding ₹1.2 lakh in a year. On the other hand, Full-KYC PPIs will be issued by banks and non-banks after completing KYC of the PPI holder and shall be used for the purchase of goods and services, funds transfer or cash withdrawal. It further provides that the PPI issuer shall have a board-approved policy for PPI interoperability.

RBI ISSUED A CLARIFICATION ON THE COMPENSATION OF PRIVATE BANKS' TOP OFFICIALS:

The RBI issued clarification vis-à-vis the guidelines on the compensation of whole-time directors/ chief executive officers/ material risk takers and control function staff in November 2019. In terms of the extant guidelines, share-linked instruments are required to be fairly valued on the date of grant using the Black-Scholes model, however, it was observed by

RBI that banks do not recognise grants of the share-linked compensation as an expense in their books of account concurrently. Accordingly, the fair value of the share-linked incentives paid to chief executive officers, whole-time directors and other key functionaries by the private banks should be recognised as an expense during the relevant accounting period. The RBI has also asked all banks, including local area banks, small finance banks and foreign banks to comply with its directions for all share-linked instruments granted after the accounting period ending March 31, 2021.

EXPERIENCED ADVOCATES, ACCOUNTANTS CAN BECOME INDEPENDENT DIRECTORS WITHOUT PROFICIENCY TEST:

As per the Companies (Appointment and qualification of directors) Amendment Rules, 2021 notified by the Ministry of Corporate Affairs, these professionals need not take the test if they have been practising for ten years in the field. Earlier, the norms had specified that directors or above in the central ministries of finance, corporate affairs, commerce, heavy industries and public enterprises having experience in handling matters related to corporate, securities or economic laws were exempted from the proficiency test.

OTHER UPDATES

AMENDMENTS MADE TO CODE OF CIVIL PROCEDURE ("CPC") BY CC ACT SHALL PREVAIL OVER ANY RULE BY HIGH COURT OR STATE AMENDMENTS:

The SCI in Sudhir Kumar v. Vinay Kumar G.B., held that Order VII Rule 14 (3) of CPC will not be applicable for bringing on record additional documents in a commercial suit in view of Section 16 of the CC Act and amendments made in Order XI Rule 1 of CPC by the CC Act. After Order XI Rule 1of CPC has been amended a specific provision/procedure has been prescribed with respect to the suits before the commercial division and before the commercial court, which must be followed and in case of conflict with the provision of CPC as amended by State Government or rule made by the High Court, the provisions as amended by the CC Act shall prevail.

SCI EXAMINED THE APPLICABILITY OF RES JUDICATA BETWEEN CO-DEFENDANTS:

SCI in Union of India v. S. Narasimhalu Naidu held that while deciding whether the plea of res judicata can be raised by the applicants against their co-defendant in the first suit held that the requisite conditions to apply the principle of res judicata as between co-defendants are that (a) there must be a conflict of interest between the defendants concerned, (b) it must be necessary to decide this conflict in order to give the plaintiff the relief he claims, and (c) the question between the defendants must have been finally decided.

CORRECTNESS OR FALSITY OF PROPOSED AMENDMENT SHOULD NOT BE LOOKED INTO AT THE STAGE OF AN APPLICATION UNDER ORDER VI RULE 17 CPC:

The DHC in Alok Kumar Lodha v. Asian Hotels (North) Ltd., while considering an application for amendment of the plaint under Order VI Rule 17 of CPC, held that the court need not go into the merits and demerits of the proposed amendments. At the stage of an application under Order VI Rule 17, the correctness and falsity of the case as sought out in the amendments should not be tested. The amendments would be permitted if the proposed amendments are necessary and proper for complete adjudication of disputes between the parties and in

absence of such amendments to the plaint, the plaintiff would not be in a position to get the entire relief.

UNDERVALUATION OF MORTGAGED PROPERTY BY THE BANK SHOULD BE VIGILANTLY LOOKED INTO BY EXECUTING COURTS:

The DHC in Pushpa Builders Ltd. v. The Vaish Cooperative Adarsh Bank Ltd., wherein a bank revised the reserve price of a mortgaged property thrice thereby bringing to Rs. 13,75,00,000/- against its original reserve price of Rs.18,13,00,000/- for the purpose of auction. The DHC held that the executing court shall be vigilant of such gross undervaluation of mortgaged property which is detrimental to the interest of the borrower. The DHC also made a reference to IBC in order to highlight the significance of protecting the interest of the borrower. The court observed that these days, the attempt is to ensure that a business entity is not pushed into liquidation or insolvency when they are unable to repay the loans.

IF SUGGESTION MADE BY THE COUNCIL UNDER MICRO, SMALL AND MEDIUM ENTERPRISES DEVELOPMENT ACT, 2006 ("MSMED ACT") IS DENIED, IT WILL AMOUNT TO UNSUCCESSFUL CONCILIATION:

The DHC in M/s Suisse A La Mode (P) (Ltd) v. M/s Kapoor Enterprise held that the reference to arbitration under Section 18 (3) of the MSMED Act, by the Micro and Small Enterprises Facilitation Council ("Council") cannot be disputed in case a party denies conciliation under Section 18(2) of the MSMED Act. Further, the DHC held that the requirements of Section 18(2) of the MSMED Act of compulsory conciliation would be fulfilled if the Council has given its suggestion and regardless of the fact that no written statement has been filed by the parties pursuant to such suggestion if the suggestion has been out-rightly denied.

COURT MAY GRANT LEAVE UNDER ORDER XI RULE 5 TO FILE NEW DOCUMENTS NOT FILED WITH PLAINT:

The DHC in Valo Automotive Pvt. Ltd. v. Sprint Cars Pvt Ltd. held that under Order XI Rule 5 of the CPC the court can grant leave to the plaintiff to file documents that were not filed with the plaint. DHC noted that Order VI Rule 17 CPC permits the court to allow amendments to pleadings for the purpose of determining the "real question in controversy" between the parties. It was further noted by the DHC that Order II Rule 2 CPC had no application at the stage of deciding an application under Order VI Rule 17 CPC to amend the plaint, and that it cannot be used to deny correction of claims at the initial stage of the case when pleadings have not been completed.

BANK GUARANTEES MUST BE FREE FROM INTERFERENCE BY THE COURTS:

The DHC in SPML Infra Ltd. vs. Hitachi India Ltd. &Anr., held that except in cases of fraud, irretrievable injustice and special equities, the Court shall not interfere with the invocation or encashment of a 'bank guarantee', provided that the invocation was as per terms of the bank guarantee. It also held that that bank guarantees must be free from interference by courts, otherwise, trust in internal and international commerce would be irreparably damaged.

NO REQUIREMENT OF EXPERIENCE FOR BEING APPOINTED PRESIDENT AND MEMBERS OF STATE CONSUMER DISPUTE RESOLUTION COMMISSION:

The BHC in the case of Vijaykumar Bhima Dighe v. Union of India andDr. Mahindra Bhaskar Limaye v. Union of India, struck down the provisions of the Consumer Protection Rules, 2020 ("Rules") which prescribes experience criteria for being appointed as president and members of the State Commission and District forum [Rule 3(2)(b) and Rule 4(2)(c)}] on the ground that these rules are violative of Article 14 of the Constitution. It also struck down Rule 6(9) of the Rules that gives each state's selection committee the power to determine its own procedure to recommend names for appointment in the order of merit for the state government to consider. The BHC said that the Rules are an attempt to circumvent the directions in the SCI judgments.

PARLIAMENT PASSED THE GENERAL INSURANCE AMENDMENT BILL:

The General Insurance Amendment Bill aims to promote a greater deal of private sector participation in the insurance companies present in the public sector. It aims to do this by seeking amendments to the General Insurance Business (Nationalisation) Act, 1972 ("GIB Act"). There were three major amendments done to the GIB Act. The first amendment was to omit the proviso to Section 10B of the GIB Act so as to remove the provision that the government had to have a 51% shareholding. The second amendment to the Act was the introduction of a new Section 24B which mandated that the Centre can relinquish control over a public sector insurer from a certain date. Lastly, there is the addition of Section 31A that imposes a greater deal of liability on the non-whole-time director. These directors will be held responsible for acts of omission and commission by the insurer.

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MONTHLY NEWSLETTER

SEPTEMBER 2021

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