



Dispute Resolution & ADR

Monthly Newsletter
January 2025

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TABLE OF CONTENTS

- Extension of statutory period to seek clarification and rectification of arbitral award
NDMC v. SA Builders Ltd
- Assessment proceedings to determine statutory dues cannot continue during CIRP
Employees' Provident Fund Organisation v. Jaykumar Pesumal Arlani
- Trial Court has discretion to release vehicles seized under the NDPS Act
Bishwajit Dey v. State of Assam
- Long-term temporary employees performing the same duties as regular staff should not be denied regularisation
Jaggo v. Union of India
- Insurance claims of LMV license holders driving transport vehicles below 7,500 kg not invalid
Bajaj Alliance General Insurance Co Ltd v. Rambha Devi
- Validity and genuineness of a Will are two distinct aspects
Lilian Coelho v. Myra Philomena Coelho
- Invalidity of equalisation claims in alimony proceedings based on evolving financial status of spouse
Rinku Baheti v. Sandesh Sharda

Extension of statutory period to seek clarification and rectification of arbitral award

NDMC v. SA Builders Ltd

Supreme Court of India | December 17, 2024
2024 SCC OnLine SC 3768

The Supreme Court has clarified that in certain circumstances such as conduct of the parties (i.e. participation in clarificatory proceedings before the arbitral tribunal) or permission by the supervisory court, an arbitral tribunal can issue clarifications and rectify errors in an award despite lapse of the statutory period of 30 days under Section 33 of the Arbitration and Conciliation Act, 1996 (**Act**). By implication, an agreement between the parties to waive the statutory period contemplated under Section 33(1) is not required to be a written agreement. Notably, the judgment highlights a practical, party-driven approach to procedural flexibility in arbitration, and reinforces the principle that arbitral tribunals maintain a certain degree of autonomy in correcting errors or providing clarifications even beyond the typical statutory period, provided the parties are not prejudiced and have actively participated in the process.

SUMMARY OF FACTS

In an arbitration between SA Builders and North Delhi Municipal Corporation (**NDMC**), the arbitral tribunal rendered its award granting a sum of INR 1.7 crore to SA Builders with post-award interest at 18% per annum (**Award**).

During execution of the Award, a dispute arose regarding the computation of post-award interest, i.e. whether the same should be calculated only on the principal sum awarded or on the aggregate of the principal and the pre-award interest.

The Delhi High Court allowed SA Builders to seek clarification from the arbitral tribunal on this point, and the tribunal clarified that the post-award interest should run on the aggregate of the principal and pre-award interest (**Clarification**).

Aggrieved, NDMC approached the Supreme Court against the Clarification.

DECISION OF THE COURT

On the issue of whether post-award interest, granted under Section 31(7)(b) of the Act, should be calculated only on the principal sum or on the aggregate of the principal and the pre-award interest, the Supreme Court affirmed the Clarification relying on its own decision in *Hyder Consulting (UK) Ltd v. Governor, State of Orissa*¹.

On the jurisdiction of the arbitral tribunal to issue clarifications or rectify errors in the Award after the lapse of the 30-day period specified in Section 33(1) for such purpose, the Court held that this statutory period is not inflexible and can be extended if so agreed upon by the parties.

The Court noted that despite the lapse of the statutory period, the High Court had expressly allowed the parties to approach the arbitral tribunal and seek clarification, and NDMC had actively participated in the clarification proceedings before the tribunal, and concluded that both these circumstances fell within the phrase '*unless another period of time has been agreed upon by the parties*' appearing in Section 33(1) as a qualification to the statutory period, which can be waived by the parties.

¹ 2015 (2) SCC 189

Assessment proceedings to determine statutory dues cannot continue during CIRP

Employees' Provident Fund Organisation v. Jaykumar Pesumal Arlani

National Company Law Appellate Tribunal, New Delhi | January 3, 2025
Company Appeal (AT) (Insolvency) No. 1062 of 2024

The National Company Law Appellate Tribunal (**NCLAT**) held that assessment proceedings to determine the liability of the Corporate Debtor (**CD**) can continue during liquidation but not during the Corporate Insolvency Resolution Process (**CIRP**) due to the bar under Section 14 of the Insolvency and Bankruptcy Code, 2016 (**Code**). However, while differentiating the language used in Section 14 ('suits or proceedings') and Section 33(5) ('suits or other legal proceedings'), the NCLAT has completely misconstrued the Supreme Court's judgment in **Sundresh Bhatt Liquidator v. Central Board of Indirect Taxes and Customs**², which addressed the moratorium under both Section 33(5) (liquidation) and Section 14 (CIRP) and held that assessment proceedings could continue during the moratorium under Section 14, although no recovery proceedings could be initiated. The reasoning provided by the NCLAT, to the effect that even assessment proceedings could not continue during the moratorium under Section 14, *prima facie* appears logical since Section 14 bars 'other proceedings' and not just 'legal proceedings', as is the case in Section 33(5). However, the NCLAT failed to consider that the purpose of the moratorium under Section 14 is to preserve the assets of the CD during the CIRP by curtailing parallel proceedings to avoid conflicting outcomes, and the judgment, to the extent it holds that even assessment proceedings or inquiries under Section 7A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (**EPF Act**) could not be initiated during the moratorium under Section 14, is not consistent with the ruling in **Sundresh Bhatt**. By halting statutory assessment, this decision effectively curtails the right to file claims and may directly impact the rightful dues of employees and workers, a class the Code seeks to protect with the highest priority.

SUMMARY OF FACTS

After the commencement of CIRP against Decent Laminates Pvt Ltd and imposition of moratorium under Section 14 of the Code, the Employees' Provident Fund Organisation (**EPFO**) initiated assessment proceedings under Sections 7A, 7Q, and 14B of the EPF Act for PF dues, interest and damages.

EPFO's claim was rejected for being submitted after the resolution plan had been approved by the Committee of Creditors (**CoC**).

Similarly, in a separate CIRP against Apollo Soyuz Electricals Pvt Ltd, EPFO's claim towards PF dues was rejected as the order under Section 7A of the Act was passed during the moratorium and no claim was lodged prior to CoC's approval of the resolution plan.

Aggrieved, EPFO approached the NCLAT in both CIRPs.

DECISION OF THE TRIBUNAL

In a common order, the NCLAT held that proceedings to assess/determine the liability of the CD cannot continue during the moratorium under Section 14 imposed during CIRP. Hence, no claim based on such an assessment carried out during the Section 14 moratorium can be urged in the CIRP.

The word 'proceeding' in Section 14 of the Code is not confined to proceedings before the Civil Court and covers all proceedings having an effect on the assets of the CD. No proceeding which depletes the assets or creates new liabilities on the CD can continue after imposition of the moratorium.

The NCLAT differentiated the decision in **Sundresh Bhatt**, where the Supreme Court recognised the limited jurisdiction to merely assess/determine the CD's liability after imposition of moratorium without taking steps for enforcement, on the ground that **Sundresh Bhatt** applied to Section 33(5) of the Code (moratorium during liquidation) which employs a language different than Section 14 (moratorium during CIRP), concluding that:

- Section 33(5) applies only to 'legal proceedings', and there is no bar against assessment proceedings.
- The word 'proceeding' in Section 14 is unqualified and covers all proceedings, including proceedings to assess/determine the liability of the CD under Sections 7A, 7Q and 14B of the Act.

The NCLAT finally held that proceedings to assess/determine the liability of the CD can continue during liquidation but not during CIRP.

² (2023) 1 SCC 472

Trial Court has discretion to release vehicles seized under the NDPS Act

Bishwajit Dey v. State of Assam

Supreme Court of India | January 7, 2025
2025 SCC OnLine SC 40

The Supreme Court clarified that there is no absolute bar against the interim release of vehicles seized under the Narcotic Drugs and Psychotropic Substances Act, 1985 (**NDPS Act**), with the ultimate discretion vesting with the Trial Court. This is crucial because a blanket ban on interim release could unfairly penalise innocent vehicle owners, causing financial hardship without due process. It also opens the door for misuse, where authorities may seize vehicles without sufficient evidence of the owner's involvement in the crime. By leaving the decision to the Trial Courts, the judgment ensures that each case is assessed on its specific facts, allowing for a fair and just outcome. The judgment, while setting appropriate safeguards, stresses that vehicles should be released if the owner can show no knowledge or connivance with the contraband. This flexible approach ensures that judicial discretion, informed by the facts, remains central to the application of the law.

SUMMARY OF FACTS

Dey had purchased a truck for commercial purposes which was found carrying heroin concealed in a black polythene during a police check.

The accused who had boarded the truck from Manipur was arrested while Dey claimed that neither he nor his driver was aware of the contraband substance being there on the truck.

The driver and helper of the truck were witnesses supporting Dey's claim and accordingly Dey sought release of his truck under Sections 451 and 457 of the Code of Criminal Procedure, 1973 (**CrPC**) stating that the vehicle was deteriorating while lying unattended at the police station.

As the Trial Court and the Gauhati High Court refused to allow interim release of the truck, Dey approached the Supreme Court of India.

DECISION OF THE COURT

The Supreme Court noted the impracticality of keeping seized vehicles carrying contraband till the conclusion of the trial and the divergence in views taken by different courts on the grant of interim release of such vehicles, and clarified that there is no specific bar/restriction under the NDPS Act on interim release of such vehicles.

The Court noted that alternatives such as videography, still photography, and preparation of an inventory would serve the requisite evidentiary purpose.

A seized vehicle may be released if the owner can demonstrate that the vehicle was used by the accused without the owner's knowledge or connivance and that the owner had taken all reasonable precautions to prevent such misuse.

Crystallising the issue, the Court outlined a four-pronged test to serve as a guideline, while vesting the final discretion with the Trial Court to take a divergent view, if so warranted:

- **Owner in possession:** When the contraband substance is recovered directly from the possession of the vehicle's owner.
- **Agent in possession:** When the contraband substance is recovered from an agent of the owner, such as a hired driver or cleaner.
- **Stolen vehicle:** When the vehicle is stolen by an accused, and contraband substance is recovered from it.
- **Third-party occupant:** When the contraband substance is recovered from a third-party occupant of the vehicle (with or without consideration) without any allegation that the owner had knowledge or connived in its storage or transportation.

In the first two scenarios, the vehicle should not be released until the accused-owner discharges the reverse burden of proof (burden of proving lies on the accused) of his involvement.

In the third and fourth scenarios, the vehicle should ordinarily be released, subject to the owner furnishing a bond to produce the vehicle when directed or deposit the vehicle's value with the court, in case the court ultimately decides to confiscate the vehicle.

Long-term temporary employees performing the same duties as regular staff should not be denied regularisation

Jaggo v. Union of India

Supreme Court of India | December 20, 2024
2024 SCC OnLine SC 3826

The Supreme Court recently held that long-serving temporary and irregular employees engaged in sanctioned functions should be considered for regularisation. The judgment importantly sheds light on the widespread misuse of temporary employment contracts that misclassify employees to deny them the benefits of regularisation, and calls for fair treatment and regularisation of long-term employees in both public and private sector. While deprecating the systemic exploitation of temporary workers who are denied the benefits of permanent employment under the umbrella of misinterpreted precedents such as **Secretary, State of Karnataka v. Uma Devi**³, the judgment importantly clarifies the difference between ‘irregular’ and ‘illegal’ appointments and the decision in **Uma Devi**, holding that irregularly appointed employees should not be automatically disentitled to the treatment given to sanctioned employees in case they meet the required criteria. The judgment also emphasises the need for action in line with international jurisprudence urging fair treatment of temporary workers.

SUMMARY OF FACTS

Jaggo and other workers were originally engaged by the Central Water Commission (CWC) on part time *ad hoc* terms between 1993 and 2004.

Over the years, the workers’ part time services evolved and they continued to perform core functions essential for the workings of the CWC. Consequently, they sought regularisation of their service before the Central Administrative Tribunal (CAT). However, CAT dismissed their application and 10 days later, their services were terminated by the CWC.

The workers challenged the termination before the Delhi High Court.

The High Court relied on Supreme Court’s decision in **Uma Devi** and held that the workers had not been appointed against sanctioned posts and had not performed a sufficient duration of full-time service to satisfy the criteria for regularisation.

Aggrieved, the workers approached the Supreme Court.

DECISION OF THE COURT

The Supreme Court quashed the termination orders and directed that the services of the workers be regularised.

The Court noted that despite being labelled as part-time/contractual employees, the workers had continuously served for over a decade and performed essential duties akin to regular employees. The nature of their work was recurring, regular, and integral, with no evidence of illegal or surreptitious appointments.

The Court observed that the decision in **Uma Devi**, which sought to distinguish between illegal and irregular appointments, has been misinterpreted and misapplied by institutions to reject claims of employees whose appointments were merely irregular, and not illegal.

Relying on recent precedents, such as **Vinod Kumar v. Union of India**⁴, which affirmed that long-term employees performing the same duties as regular staff should not be denied regularisation based on temporary labels, the Court concluded that denying equitable treatment to workers and regularisation of their services, followed by arbitrary termination, amounted to manifest injustice that must be rectified.

³ 2006 4 SCC 1

⁴ (2024) 1 SCR 1230

Insurance claims of LMV license holders driving transport vehicles below 7,500 kg not invalid

Bajaj Alliance General Insurance Co Ltd v. Rambha Devi

Supreme Court | November 11, 2024
2024 SCC OnLine SC 3183

Addressing a long-standing issue involving disputed insurance claims, the Supreme Court clarified that Light Motor Vehicle (**LMV**) license holders can drive transport vehicles below 7,500 kg without a separate license for driving a 'transport vehicle'. This judgment directly addresses the misuse of technicalities/frivolities by insurance companies to deny legitimate claims, ensuring that compensation is not unjustly withheld. It also aligns with the intent of the 1994 amendment to the Motor Vehicles Act, 1988 (**Act**), which sought to streamline vehicle categorisation without imposing additional licensing burdens. By eliminating the need for a separate 'transport vehicle' endorsement on driving licenses for small-scale operations, the judgment reduces compliance challenges, particularly for businesses relying on LMVs for deliveries and logistics. This simplification benefits both individual drivers and enterprises by easing operational constraints and fostering a fairer, more transparent insurance framework.

SUMMARY OF FACTS

Section 10 of the Act requires a driving license to expressly endorse the categories of motor vehicles that the holder is entitled to operate. The unamended Act categorised such vehicles as light (below 7,500 kg), medium, and heavy (above 12,000 kg) motor vehicles. However, for the class of 'transport vehicle' (which is expressly included in the definition of LMV), Section 3 necessitates a specific endorsement on the license.

After the 1994 amendment to the Act, 'transport vehicle' replaced the categories of medium and heavy motor vehicles in Section 10, keeping intact the category of LMV. This culminated into the issue of whether an LMV license holder can drive a transport vehicle weighing less than 7,500 kg without a specific endorsement on their license, as insurance companies started to deny compensation claims on this ground.

Although the Supreme Court answered the question in the affirmative in *Mukund Dewangan v. Oriental Insurance Company Ltd*⁵, insurance companies challenged the decision on the ground that untrained drivers would start driving transport vehicles.

Eventually, *Mukund Dewangan* was placed before a larger bench for reconsideration.

DECISION OF THE COURT

The Supreme Court upheld the decision in *Mukund Dewangan* deciding that a person holding an LMV license was entitled to drive a transport vehicle below 7,500 kg.

The Court held that the necessity for specific endorsement of 'transport vehicle' under Section 3 applies only to medium and heavy motor vehicles.

Noting that the vehicles covered under the LMV license may also be used for small-scale deliveries, the Court observed that the class of 'transport vehicle' is not a watertight compartment and had some degree of overlap with LMV. If a transport vehicle falls within the LMV category (below 7,500 kg), no separate license would be required for such a vehicle.

The requirement for a separate license is unreasonable and contrary to the legislative intent of the 1994 amendment which kept intact the definition of LMV. Thus, 'transport vehicle' occurring in the amended Section 10 must be interpreted to mean transport vehicles of 7,500 kg and above.

Observing the lack of empirical data on road accidents to substantiate the insurance companies' argument, the Court observed that the ruling would prevent insurance companies from taking a technical plea to defeat legitimate compensation claims.

⁵ (2016) 4 SCC 298

Validity and genuineness of a Will are two distinct aspects

Lilian Coelho v. Myra Philomena Coelho

Supreme Court of India | January 2, 2025
2025 SCC OnLine SC 11

The Supreme Court has held that the valid execution of a Will in accordance with the prescribed procedure does not foreclose the obligation of the courts to consider its genuineness, clarifying the two aspects to be distinct requirements. This distinction emphasises the importance of scrutinising not just the adherence to legal formalities, but also the authenticity of the Will, particularly when suspicious circumstances arise, ensuring that the true intentions of the deceased are upheld. This decision strengthens judicial scrutiny in matters of inheritance, providing greater protection against fraudulent or coerced Wills, and assuring fairer outcomes for heirs and beneficiaries.

SUMMARY OF FACTS

While deciding a petition for grant of Letters of Administration (LoA) for a Will, a Single Judge of the Bombay High Court found that the Will was validly executed, but owing to it being shrouded in suspicious circumstances, it was not held to be genuine and the LoA could not be granted.

In appeal, the Division Bench noted that the Single Judge had recorded a finding that the Will is validly executed and it is genuine. It held that suspicious circumstances, if any, have to be taken into consideration by the court before recording a finding that the Will is genuine and not after recording such a finding.

The Single Judge's finding that the Will is shrouded in suspicious circumstances was set aside and the LoA was granted by the Division Bench.

Contending that the Single Judge had not recorded a finding that the Will is genuine, the Division Bench's decision was challenged before the Supreme Court.

DECISION OF THE COURT

Following the principles laid down in *Kavita Kanwar v. Pamela Mehta*⁶ and *Derek AC Lobo v. Ulric MA Lobo*⁷ that valid execution of a document and proof of its genuineness are two distinct aspects, the Supreme Court held that a finding that the 'Will is validly executed' is based on adherence to the prescribed procedure and is not the same as a finding that the 'Will is genuine'.

Even if the Will is validly executed in accordance with law, that by itself would not amount to a finding with respect to its genuineness.

If a Will is found not to be validly executed (failure to follow the prescribed procedures), then there would be no need to decide whether it is shrouded in suspicious circumstances.

There was a conspicuous absence of any specific finding regarding the genuineness of the Will in the Single Judge's order, and hence the Division Bench was not justified in setting aside the Single Judge's finding regarding suspicious circumstances. The Single Judge's order was upheld.

⁶ (2021) 11 SCC 209

⁷ 2023 SCC Online 1893

Invalidity of equalisation claims in alimony proceedings based on evolving financial status of spouse

Rinku Baheti v. Sandesh Sharda

Supreme Court of India | December 19, 2024
2024 SCC OnLine SC 3801

The Supreme Court held that the husband is not obligated to maintain his wife as per his evolving status after separation, analysing the law and practice of granting alimony/maintenance with a critical eye. The judgment recognises the purpose of grant of alimony/maintenance – to achieve social justice and ensure that the wife is maintained at the same standard as what she was accustomed to prior to separation – and concludes that the law of alimony and maintenance is not aimed at securing a windfall for the wife or equalisation of wealth based on the subsequent financial progress made by the husband. This judgment would ensure that the social justice factor underlying this law is not misused to make unreasonable demands for alimony in matrimonial disputes. Importantly, the judgment also recognises irretrievable breakdown of marriage as a valid ground for grant of divorce. While the exercise of the Supreme Court's inherent powers was necessary due to the absence of a statutory provision, a ruling to enable Family Courts to grant divorce on this ground as an exercise of their inherent powers is crucial for modernising divorce law in India.

SUMMARY OF FACTS

The Supreme Court was deciding a petition by a wife seeking transfer of the divorce petition filed by the husband from the Family Court, Bhopal to the Family Court, Pune.

While considering the husband's plea to exercise inherent powers under Article 142(1) of the Constitution of India to grant divorce on account of irretrievable breakdown of marriage, the Supreme Court directed transfer of the divorce petition to the Pune Court for the limited purpose of determining the quantum of alimony or maintenance payable to the wife.

Before the Pune Court, the wife sought alimony and monthly maintenance commensurate to the current assets of the husband and residence rights in the matrimonial house at Pune, relying upon the terms of the husband's previous divorce with his ex-wife, wherein he had given 50% of his net worth (around INR 500 crore) to his ex-wife in addition to a house in the USA.

Rejecting the wife's demand, the Pune Court recommended alimony at INR 2 lakh per month or a lump sum amount of INR 10 crore, which was placed before the Supreme Court.

DECISION OF THE COURT

While granting a decree of divorce under Article 142 of the Constitution, the Supreme Court also examined the reasonableness of the alimony fixed by the Pune Court and laid down certain guiding factors to assess the same:

- Maintenance claims cannot be used for equalisation of wealth with the other party. Noting the trend that equalisation is only sought when the spouse is a person of means or is doing well for themselves, and not when their wealth has decreased since the separation, the Court held that there cannot be two different approaches while seeking or granting maintenance, depending on the status and income of the spouse.
- The law of maintenance is aimed at empowering the destitute and achieving social justice and dignity of the individual. While the husband is expected to maintain his wife in a manner similar to what she was accustomed to in her matrimonial home, he is not expected to maintain her as per his present status all his life, burdening his personal progress.
- However, in case of a continuing obligation on the husband, he may seek reduction in maintenance amount. Equally, a divorced wife can seek enhancement owing to inflation or other circumstances which have adversely affected her status and position such as loss of income, etc.

Observing that the wife had sought equalisation of status not just with the husband but also with his ex-wife, the Court rejected her claim and fixed the lump sum alimony at INR 12 crore as a full and final settlement.



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