

Arbitration & Code of Civil Procedure, 1908

Interactive Discussion

By

Ashish Makhija, FCA, AICWA, LLB

Words of Mahatma Gandhi

“ I realized that the true function of a lawyer was to unite parties A large part of my time during 20 years of my practice as a lawyer was occupied in bringing about private compromises of hundreds of cases. I lost nothing thereby – not even money, certainly not my soul”

..... Mahatma Gandhi

“Arbitrate, not Litigate”

What is Arbitration?

- 'Legal Process' outside the Court for resolution of dispute by neutral person
- 'Hiring' or 'Renting' a Judge
- Minimising the role of courts to the extent possible in settlement of disputes

What is Arbitration?

- Is it any way associated with arbitrary?
- Duty of Arbitrator to act fairly and strictly in accordance with law
- Arbitration different from 'adjudication'

Arbitration Rules

- Section 19 of The Arbitration & Conciliation Act, 1996
 - Arbitral Tribunal (Arbitrator) not bound by *Code of Civil Procedure, 1908 or Indian Evidence Act, 1872*
 - Parties are free to agree on the procedure

Arbitration Rules

- Section 19 of The Arbitration & Conciliation Act, 1996
 - In the absence of any agreement, Arbitrator to conduct the proceedings in an **appropriate manner**
 - **Power to determine admissibility, relevance, materiality and weight of any evidence lies with Arbitrator**

What is Law?

- Knowledge of *Jurisprudence* is a must
- John Austin Version –
 - Command
 - Duty
 - Sanction
- Prof. Hart Version –
 - Primary Duty
 - Secondary Duty

Types of Law

- Substantive Law
 - Determines Rights & Liabilities of the Parties
 - Indian Contract Act
 - Indian penal Code
 - Industrial Disputes Act
- Procedural Law
 - Prescribes Practice, Procedure & Machinery for enforcement of these rights & liabilities
 - Indian Evidence Act
 - Criminal Procedure Code
 - Limitation Act

Rules of Procedure

- Assist in administration of justice
- To be construed liberally
- Proceedings not invalid on mere technicalities
- Code of Civil Procedure, 1908 (CPC) regulates the procedure to be followed by Civil Courts in India
- CPC is not a penal enactment

Constitution of CPC

- Exhaustive Code
- Issues not dealt in CPC – Court has inherent power to act
- Code – 158 Sections
- Rules – 51 Orders

CPC at a glance

- Jurisdiction of Courts
- Res-judicata – Thing already decided
- Place of Suing
- Suits by or against the Government
- Appeals from Original Decrees
- Appeals from Appellate Decrees

CPC at a glance

- Power of Appellate Court
- Reference, Review & Revision
- Enlargement of Time
- Inherent Powers of Court
- Parties to Suits (Order I)
- Amendment of Pleadings (Order VI)

CPC at a glance

- Appearance of Parties (Order IX)
- Summary Procedure (Order XXXVII)
- Temporary Injunction (Order XXXIX)
- Production of additional evidence in Appellate Court (Order XLI)

Not to be forgotten

- Principles of Natural Justice
 - Audi alteram partem rule
 - Nemo iudex causa sua
- Interpretation of Statutes
 - Literal construction
 - Logical construction

Arbitration & CPC

- Procedure laid down in CPC not to be followed (Section 19)
- Dispute can be referred by Court to Arbitration (Section 8)
- Interim measures by Court (Section 9)
- Setting aside of award & determination of entitlement of fee [Section 13(5) & (6)]

Arbitration & CPC

- Determination of question of termination of mandate (Section 14)
- Assistance of Court in taking evidence (Section 27)

Arbitration & CPC

- Application for setting aside arbitral award (Section 34)
 - Incapacity of a party
 - Invalid Arbitration Agreement
 - Improper Notice
 - Exceeds Authority
 - Composition of Tribunal/Arbitral procedure inconsistent with the agreement

Arbitration & CPC

- Application for setting aside arbitral award (Section 34) – By Court
 - Subject matter of dispute is not capable of settlement by arbitration
 - Award is in conflict with the public policy of India
- Enforcement of Award as a decree (Section 36)

Any Questions Please?

Thank you