



MONTHLY NEWSLETTER

The Law Desk

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A class II student was found with his throat slit in the bathroom of his school and in the same matter a class XI student, aged 16 years and 5 months on the date of the incident, was arrested. Further, in cases where a Heinous offence is committed by a child in conflict with law has completed or is above the age of sixteen years on the date of commission of the offence, a preliminary assessment is required to be conducted by the Juvenile Justice Board constituted under section 4 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (*Hereinafter Referred to as JJ Act, 2015*). Once the Board considers a Child in Conflict with law fit to be tried as an Adult, he/she is transferred to the Children's Court having jurisdiction in the said matter.

Therefore the Apex Court in the instant case asked the Central Government, National Commission for Protection of Child Rights and State Commission for Protection of Child Rights to issue guidelines/directions in this regard.

The Board has to give its decision on the basis of mental capacity and ability of the child to understand the consequences of his/her acts. In the present case, both the requisites of section 15 were fulfilled and the Board proceeded to pass an order holding that there was a need of trial of the respondent concerned as an adult and accordingly directed for transfer of the case to the Children's Court. The appeal concerning the said matter was filed before the Children's Court, which upheld the decision of the Board and dismissed the appeal.

The Punjab and Haryana High Court remanded the matter for fresh consideration to the Juvenile Justice Board.

MATTER IN ISSUE

Juvenile Justice Board and the Children's Court were of the view that the mental capacity and the ability to understand the consequences of the offence were one and the same, meaning if the child had the mental capacity to commit the offence, then he automatically had the capacity to understand the consequences of the offence.



to control himself or his actions will depend on his level of emotional competence.

ANALYSIS

India's Criminal Justice System is based on the Reformatory theory of Punishment. The said theory is based on the premise that no individual is a born criminal and a person's conduct is the result of his upbringing/social conditioning.

Therefore, the purpose of this theory is to reform a person so that he may become a law-abiding member of the community once again. The amendments brought about in the JJ Act, 2015 inserted a provision wherein a child can be tried as an adult; however, the same is based on a pre-assessment by the JJ Board. However, there are no guidelines in case the JJ Board thinks a child is fit enough to be tried as an adult.

The Apex Court Judgment not only recognizes the need for framing such guidelines but also stresses the importance of the fact that not every child, despite having the mental capacity, will have the ability to understand the consequences of his acts and, in deciding whether the child is to be tried as an adult, physical maturity, cognitive abilities, and social and emotional competencies etc. have to be taken into consideration so that the very purpose of enacting the legislation is not defeated.

APEX COURT'S JUDGMENT

The matter further reached to the Apex Court wherein the Apex Court categorically stated that the finding by the Juvenile Justice Board and the Children's Court was a grave error committed by them and the mental capacity and ability to comprehend/understand the consequences of one's acts are not the same. A child with average intelligence/IQ will have the intellectual knowledge of the consequences of his actions. But whether or not the child is able

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**BANK ACCOUNT
HOLDERS CAN SEEK
RECOURSE UNDER
CONSUMER PROTECTION
ACT HELD THE APEX
COURT**
- AYUSHI RAGHUWANSHI

INTRODUCTION

Consumer Protection is meant to safeguard the interests of those who buy goods and services providing them a timely and effective mechanism to seek protection. In a landmark judgment, *Arun Bhatiya versus HDFC Bank & Ors*^[1] the Supreme Court has held that Bank account holders can now seek recourse under the Consumer Protection Act for deficiency of services. 'Services' include Bank services and any bank account holder aggrieved by the services of the bank can approach Forums under the Consumer Protection Act.

FACTS

The appellant along with his father held a joint Fixed Deposit account in HDFC bank of an amount of Rs 75/-

[1] Civil Appeal Nos 5204-5205 of 2022 (Arising out of SLP(C) Nos 29765-29766 of 2019)

lakhs at the rate of 7.5% to amount to Rs 77/- on maturity of 145 days. The appellant's father submitted a letter for encashment of the entire fixed deposit amount in his individual savings account to the manager of the respondent Bank but the appellant instructed the bank not to. The appellant was informed that the entire amount was credited to his savings account whereas he alleged that no such amount was credited.



Before the SCDRC (State Consumer Dispute Redressal Commission)

The Appellant filed a consumer complaint before the SCDRC for deficiency of service by the bank but the SCDRC did not entertain the complaint stating reasons that it did not constitute a consumer complaint.

Before the NCDRC (National Consumer Dispute Redressal Commission)

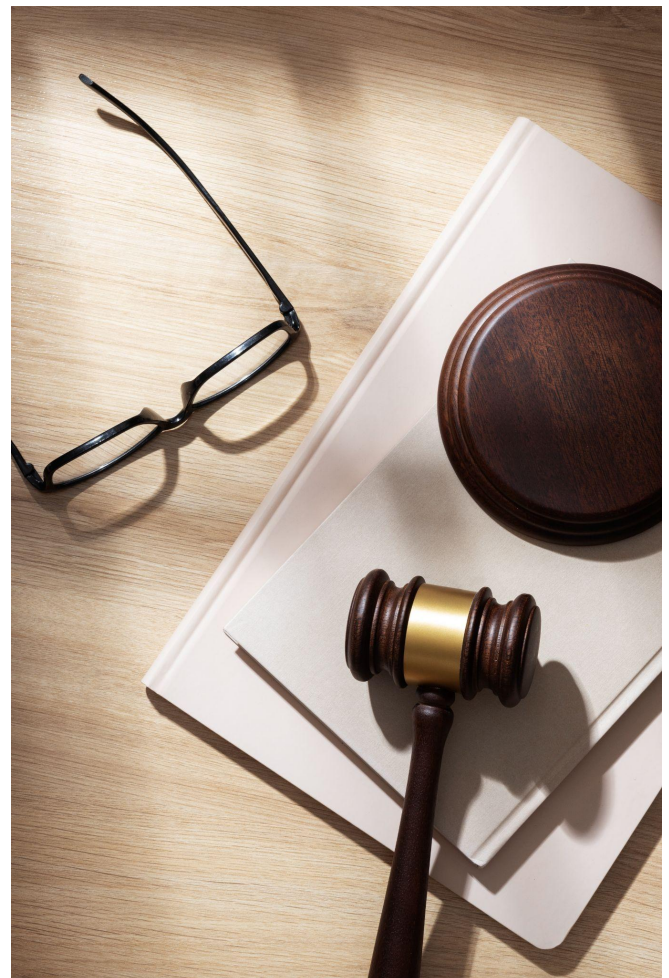
The appeal was dismissed stating that the Counsel withdrew the same upon instructions but the Appellant filed a review petition stating that he did not give any such instructions. The review application was rejected by the NCDRC stating that the same has been done with the liberty to the Appellant to approach the appropriate forum.

The Appellant then approached the Supreme Court.

SUPREME COURT'S OBSERVATION

The Apex Court deliberated on the definitions of 'consumer', 'deficiency' and 'service' under the Consumer Protection Act. The Court held that all kinds of services fall within the ambit of 'service' under the Act.

“A person who avails of any service from a bank will fall under the purview of the definition of a 'consumer' under the 1986 Act. As a consequence, it would be open to such a consumer to seek recourse to the remedies provided under the 1986 Act.”



Deliberating on the definition of 'deficiency', the Supreme Court in **Maharashtra State Financial Corporation v. Sanjay Shankarsa Mamarde**^[2] held,

"It is manifest from the language employed in the clause that its scope is also very wide but no single test as decisive in the determination of the extent of fault, imperfection, nature and manner of performance, etc. required to be maintained can be laid down. It must depend on the facts of the particular case, having regard to the nature of the "service" to be provided."

A bench of this Court in **Vodafone Idea Cellular Limited v. Ajay Kumar Agarwal**^[3] explained that "service of every description will fall within the ambit of the definition of 'services' under section 2(1) (o) of the 1986 Act".

CONCLUSION

The Supreme Court in this notable judgment has categorically held that the bank account holders fall within the ambit of consumers who can seek protection under the Consumer Protection Act. This development would

^[2] (2022) 6 SCC 496

^[3] (2010) 7 SCC 489



provide an effective and speedy remedy at the disposal of the bank account holders in case of any deficiency in the services provided by the bank. The definitions under the Consumer Protection Act have also been elucidated in the judgment which sheds light on the provisions expanding the scope of the definitions.

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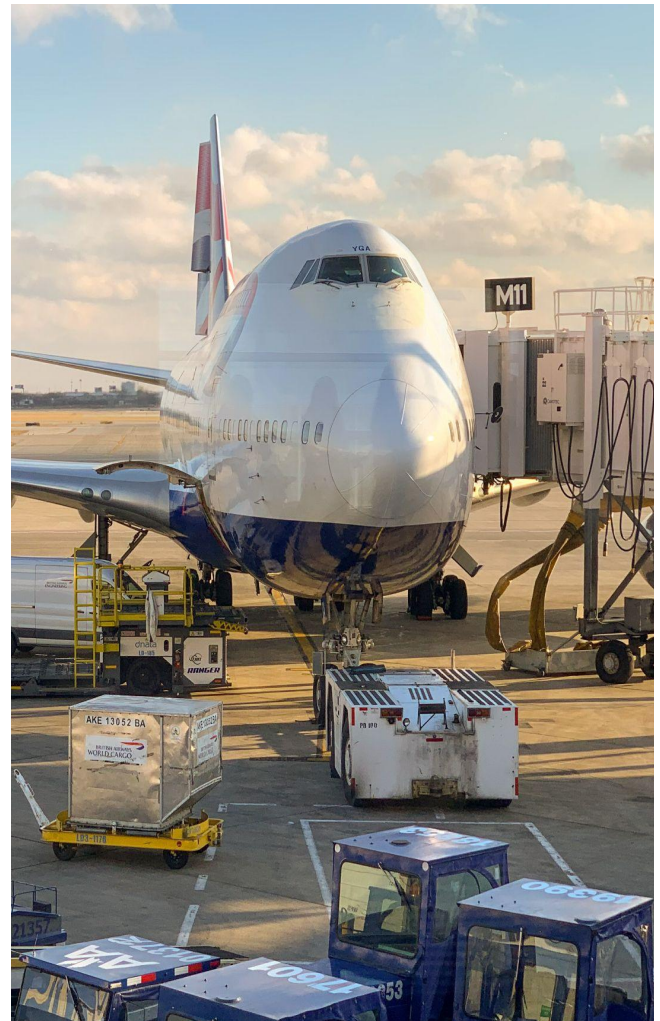
THE PROVISIONS OF THE
CARRIAGE BY THE AIR ACT
SPECIFICALLY DISCLAIMS
THE LIMITATION ACT'S
APPLICABILITY
-SHUBHAM SONI

INTRODUCTION

The Air Act 1972 expressly excludes the applicability of Limitation Act, held in the matter of *M/s Bhagwandas B. Ramchandani vs. British Airways*^[4]. Right to Damages itself is extinguished after the expiry of the period of two years and therefore the provisions of the limitation act have no application as there is no right subsisting for enforcement.

BACKGROUND

The Appellant engaged in the import and export business. On January 4, 2010, the Appellant used British Airways to transport a cargo of fruits and vegetables from Mumbai to Canada via London. However, due to bad weather in London on January 6, 2010, the flight could not depart for Canada, causing the fruits and vegetables to be damaged and destroyed. The appellant filed a claim acknowledged by the Respondent who made an offer to settle



the case for 50% of the claim amount.

The Appellant filed an Original Suit with the City Civil Court in Mumbai for recovery. The Respondent, among other things, claimed that the lawsuit was time-barred. The Trial Court ruled that the lawsuit is not time-barred because the respondent had acknowledged a proposed settlement of the claim at 50% of the demand as of October 28, 2010, which is when

^[4] Civil Appeal No. 4978 of 2022

the limitation period specified in Rule 30^[5] of the Second Schedule to the Carriage by Air Act, 1972, could be computed from. The Trial Court relied on Section 18^[6] of the Limitation Act for this purpose, reasoning that the said Act applied to actions brought under the Air Act.

The appellant filed a writ petition before the High Court of Bombay after being aggrieved by the Trial Court's ruling. The Bombay High Court allowed the appeal, but noted that the Carriage by Air Act is a special statute that would have an overriding effect over the Limitation Act, which is a general statute and rejected the findings of the Trial Court and held that the suit would be barred by limitation.

ISSUES

(i) *Does Limitation Act, 1963 apply to the period specified in Rule 30 of the Second Schedule of the Carriage by Air Act, 1972?*

^[5] **Rule 30** - (1) The right to damages shall be extinguished if an action is not brought within two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

(2) The method of calculating the period of limitation shall be determined by the law of the Court seized of the case.

^[6] **Section 18** - Effect of acknowledgement in writing.

The Limitation Act, a subset of adjectival law, is applicable to all processes it covers as of the date of its passage. However, there is a widely accepted principle that indicates the limitations clauses do not apply when the right itself expires. Rule 29^[7] outlines the legal remedy for bringing a claim for damages, whereas Rule 30 speaks of the right to damages. The purpose, object, and meaning of Rule 30 are to be regarded in the context of right as against a remedy. Rule 30 also uses the expression “extinguishment” as against “bar”, which is generally used in the context of a remedy.

(ii) *Whether the Air Act, 1972, particularly Rule 30 of the Second Schedule expressly excludes the applicability of the Limitation Act, 1963?*

The purpose of the Convention is to bring about the unification of Rules related to International Carriage by Air, Sub-Rule (2) must be read harmoniously while also taking into account

^[7] **Rule 29** - (1) An action for damages must be brought, at the option of the plaintiff, in the territory of one of the High Contracting Parties, either before the Court having jurisdiction where the carrier is ordinarily resident, or has his principal place of business, or has an establishment by which the contract has been made or before the Court having jurisdiction at the place of destination.

(2) Questions of procedure shall be governed by the law of the law of the Court seized of the case.

the content of Sub-Rule (1). After considering the matter in detail the bench reached to a conclusion that - *Rule 30 of the Carriage by Air Act 1972, expressly excludes the applicability of the Limitation Act, 1963.*

JUDGEMENT AND CONCLUSION

The Court addressed the question of the applicability of the Limitation Act to the time period stipulated in Rule 30 of the Second Schedule of the Carriage by Air Act, 1972 and stated that Rule 30 (2) does not permit the applicability of exclusion of periods for the purpose of reckoning the period of two years considering the legislative history of the Convention and the consistent interpretation of Article 29 of the Warsaw Convention, 1929, adopted in different jurisdictions for the purpose of uniformity and to further the purpose and object of the Convention. It is important to reaffirm a recognized principle and the courts should strive to maintain consistency of interpretation with the courts of other jurisdictions when interpreting international treaties and conventions.



4 THE CONDUCT OF PARTIES CANNOT CONSTITUTE AN ARBITRATION AGREEMENT - SAMAKSH DASOT

The Hon'ble Calcutta High Court vide its order dated 18.08.2022 passed in ***EASTERN COALFIELDS LIMITED Vs. RREPL-KIPL (JV)*** held that Courts while exercising its powers u/s11 of Arbitration and Conciliation Act, 1996 is bound to examine the existence of an Arbitration agreement and in absence of the same, the Courts cannot refer the parties to Arbitration merely because parties did not object to the same.

FACTUAL MATRIX

The Eastern Coalfields Limited (Appellants in the present case) had applied for review of the Judgement and order dated 09.04.2021 passed by the Hon'ble Calcutta High Court in AP No. 371 of 2020. The review applicant issued a work order dated 18.04.2018 in favour of the respondent. Clause 13 of the work order dealt with resolution of disputes between the parties. A dispute rose between both the parties and consequently, the Respondent filed an Application u/s 11 of the Arbitration and

Conciliation Act, 1996 for the appointment of an arbitrator in respect of the disputes arising out of the work order.



Vide the award dated 09.04.2021, the Hon'ble Calcutta High Court allowed the said application by observing that the applicant

does not dispute the existence of the arbitration agreement.

The Applicant had preferred a SLP before the Hon'ble Supreme Court against the order dated 09.04.2021 passed in AP No. 371 of 2020. Vide the order dated 26.11.2021 the Hon'ble Supreme Court disposed of the SLP by permitting the Applicant to file a review application before the Hon'ble Calcutta High Court. Pursuant to such liberty being granted, the Applicant had filed the present review application.

DECISION

The Hon'ble Calcutta High Court held that there is no Arbitration agreement as a bare perusal of Clause 13 would make it clear that option of arbitration was only available to government and the Respondent is not a government enterprise and it only had the option of pursuing remedy in the Court of Law. It further held that conduct of a party cannot be the substitute for an arbitration agreement which is mandatory for a petition u/s 11 of Arbitration and Conciliation Act, 1996 to be maintainable. It held that the order dated 09.04.2021 is passed on the mere ground of non-objection of the parties without determining if there exists any valid Arbitration agreement, therefore, the order dated 09.04.2021 needs to be set aside.

The Hon'ble Calcutta High Court further observed that while deciding an application u/s 11 of the Arbitration and Conciliation Act, 1996,

the Court must satisfy itself on a prima facie view that if the parties have a binding arbitration agreement and it cannot appoint the arbitrator merely on the ground that the either party is not raising any objections regarding the appointment of an Arbitrator.

ANALYSIS

Indubitably, findings made by the Hon'ble High Court would provide an impetus to Courts whilst dealing with applications u/s 11 of the Act. As the present judgment clearly sets out that the Hon'ble Court must satisfy itself on a prima facie view if the parties have a binding arbitration agreement and it cannot appoint the arbitrator merely on the ground that the either party is not raising any objections regarding the appointment of an Arbitrator.



5 LEGAL NEWS AND UPDATES

1. A plea seeking exemption for lawyers from wearing black coats and gowns in the apex court as well as high courts across the country during summer refused: Supreme Court

2. The facts can only be determined by leading evidence before the forum of first instance or in rare cases by filing additional evidence before the forum: NCDRC

3. When the primary remedy sought by the claimant is denied by the Arbitral Tribunal, the Arbitral Tribunal cannot award the claimant an interim or auxiliary amount contained in the same claim: Delhi High Court

4. If the victim had crossed the limitation line of filing an appeal to the inquiry report it can be condoned on the condition that it is supported with a sufficient reason: Delhi High Court

5. The service tax does not apply to reimbursements from customers for water, electricity, and diesel charges spent for service providing: CESTAT

6. If a person who entered into a consensual sexual intercourse in a second marriage but without disclosing their first marriage it would be prima facie constitute as rape.: Bombay High Court

7. In a situation wherein the parties in dispute did not sign the arbitration clause in an agreement, that party can still be referred to arbitration: Delhi High Court

8. Right to Receive Correct Salary & Allowances under Relevant Statutory Rules Is a Vested Right: Tripura High Court

9. Habeas Corpus Pleas Should Not Be Used to Exert Pressure Upon Police to Speed Up Their Investigation: Allahabad High Court





10. Presumption U/S 113B Evidence Act Mandatory: Kerala High Court Reopens Case After It Was Closed as Suicide

11. No Vicarious Liability Under Criminal Law Unless Strictly Mandated by Statute: J&K&L High Court

12. Allahabad High Court Orders DNA Test in A Murder Trial To 'Unearth Truthfulness' Of Prosecution's Case.

13. Lok Sabha Passes Energy Conservation Amendment Bill 2022

14. Object Of Default Bail Inherently Linked with Article 21, Safeguards Accused's Life & Personal Liberty Against Arbitrary Detention: Delhi High Court

15. Amendment To Section 36(1) (va) Of Income Tax Act Is Prospective in Nature: Delhi High Court

16. Order of Maintenance Does Not Get Wiped Out Because Of Settlement During Pendency Of Execution Proceedings: J&K&L High Court

17. Kerala High Court Questions Maintainability of MLAs' PIL Against ED Probe Into KIIFB, Reserves Verdict

18. Appeal U/S 372 CrPC for Enhancement of Punishment Not Maintainable: Allahabad High Court

19. No Accused Is Incapable of Being Reformed": Allahabad HC Modifies Sentence from Life Term To 10 Yr. In S. 304 Part 1 IPC Conviction Case

20. NCTE Act | Deemed Recognition Is Without Any Limitation or Time Bar When Conditions Are Satisfied: Gauhati High Court

21. Bank Can't Initiate Criminal Proceedings When Borrower's Declaration As 'Wilful Defaulter' Is Stayed by Court: Karnataka HC

22. The Supreme Court declared Section 3(2) of Benami Transactions Prohibition Act,1988 as Unconstitutional on the ground of being manifestly arbitrary

23. Justice UU Lalit sworn as the 49th Chief justice of India.





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