

SC Overrules Decision on Cheques

The Supreme Court has overruled its own judgment regarding the law on bounced cheques. The Supreme Court as well as high courts have been following the wrong judgment in several cases under the Negotiable Instruments Act. Now it has turned the law around. In this case, the payee did not issue notice to the drawer when the cheques bounced for the first time. He presented them again, and they bounced again. Then only he initiated proceedings under the Act. There were contrary views on whether the proceedings were valid if the payee did not act for the first time. Therefore the question was referred to a larger bench. The issue was “whether the payee or holder of cheque can initiate proceedings of prosecution for the second time if he has not initiated any action on earlier cause of action?” Settling the law, the Supreme Court, in the latest case titled MSR Leathers vs S Palaniappan, stated that prosecution based on the second or successive dishonour of the cheque is also permissible. It overruled the 1998 decision in Sadanandan Bhadrans case and now ruled that prosecution based upon second or successive dishonour of the cheque is also permissible.

Third Parties in Arbitration

The Supreme Court has held that even non-signatory parties to agreements can be referred to arbitration under the Arbitration and Conciliation Act. The expression ‘person claiming through or under’ in Section 45 would mean multiple and multi-party agreements, though in exceptional case. The judgment in the case, Chloro Control Ltd vs Severn Trent Water Purification Inc, explained that even non-signatory parties to some of the agreements can demand and be referred to arbitration. The Bombay High Court ruling in this case was upheld and the disputes between various parties were referred to arbitration which will be conducted according to the rules of International Chamber of Commerce.

Award Must be Given to Party

The Supreme Court has ruled that the service of a copy of an arbitral award on the agent or a lawyer of a party did not amount to service on the party itself, according to the provisions of the Arbitration and Conciliation Act. In this case, Benarsi Krishna Committee vs Karmayogi Shelters Ltd, the copy was available with the lawyer, but not the firm itself. This caused some delay in challenging the award in the Delhi High Court. A single-judge bench held that if the lawyer or agent got the copy of the award, that would amount to the party itself getting it. However the division bench negated this and insisted that the award should be served on the party itself. On appeal, the Supreme Court upheld this view and stated that the expression “party”, as defined in the Act, clearly indicated a person who is a party to an arbitration agreement. The definition is not qualified in any way so as to include the agent of the party to such agreement.

More Liability on Insurance Firms

The Delhi High Court has ruled that a general insurance company must pay the victim of a road accident even if the terms of the policy have been broken. In this appeal case, Bajaj Allianz General Insurance Company vs Savitri, the firm argued that since it had successfully proved the breach of the terms of policy, it was entitled to be exonerated of its liability and the motor vehicles accident tribunal was wrong in fixing the liability on the insurer and then allowing it to recover the amount from the owner of the vehicle and the driver. The high court asserted that the insurer’s liability to satisfy third party liability has been decided by the Supreme Court in several cases. “Even if a conscious breach on the part of the insured is established, the insurer has a statutory liability to pay the compensation to the third party and will simply have the right to recover the same from the insured person,” the judgment said.

Firm Buying Flats not 'Consumer'

The National Consumer Commission last week dismissed a complaint moved by Singhal Finstock Ltd against Jaypee Infratech Ltd complaining of deficiency in service in allotment of apartments. The crucial question, according to the judgment, was the purpose of buying the flats — whether it is for commercial purpose, to earn profits, or for self-use. If it is for commercial purpose, the former company would not fall in the definition of 'consumer'. The judgment stated that though the firm and its directors asserted that the flats were for providing residence to the executives, they have not proved that it was not for commercial purpose or as investment. In fact, they declared that they were investors and the memorandum of association stated that they were in the business of real estate and other related commercial activities. Therefore, the commission stated that the complaint was not maintainable under the Consumer Protection Act.

(Business Standard)