

COMMERCIAL LITIGATION : KEY JUDGMENTS AND UPDATES FOR THE YEAR 2022

In 2022, several noteworthy judgments were passed by the Supreme Court of India (**SC**) and the High Courts (**HC**) of different states, touching upon mandatory mediation, insurance and other material laws affecting the business and contractual relations between parties.

We have enumerated hereinbelow some significant developments in the field of commercial litigation in India for the year 2022.

1. An insurance policy barring filing of claim after specified time period is void (March)

In *Oriental Insurance Company Limited v. Sanjesh & Anr.*, the SC dismissed the challenge to the Allahabad HC judgement which had held that the insurance policy's condition of dismissing the claim if not lodged within a period of two months is contrary to the Indian Contract Act as it in an "Agreement in restraint of legal proceedings". In context, under the Indian Contract Act, an agreement which extinguishes the right of a party to institute legal proceedings on the expiry of the specified time period are void.

2. Dispute arising out of agreements relating to property used exclusively for 'Trade & Commerce' constitutes a commercial dispute (June)

In *Kushal Limited through Auto Sign and Managing Director Mr. Yogesh Ghanshyambhai Patel v. M/s. Tirumala Technocast Private Limited*, the Gujarat HC introduced an acid test to determine whether or not disputes related to a property is a "commercial dispute" under the Commercial Courts Act, 2015. The HC held that where the property in question is used "exclusively" for the purpose of trade or commerce, the dispute would be a commercial dispute.

3. Maintainability of a composite suit in commercial courts (July)

In *TV Today Network Limited v. News Laundry Media Private Limited & Ors.*, the Delhi HC held that the jurisdiction of commercial courts is not ousted merely because certain relief in a suit is also triable by other civil courts. The HC held that where the relief is in respect of copyright violations, and the other reliefs claimed arise out of such intellectual property rights, then the commercial courts would have the jurisdiction to try the suit.

4. Party seeking specific performance of a contract is required to prove readiness and willingness to perform its part of a contract (July) (read our thoughts on the judgement [here](#))

In *U.N Krishnamurthy v. A.M. Krishnamurthy*, the SC held that party seeking specific performance of a contract under the Specific Relief Act, 1963 is required to prove 'readiness and willingness' to perform its part of the contract all along from the date of execution of the contract till date of decree. Further, it held that readiness means one's capacity to perform the contract including its financial capacity and willingness relates to the conduct of such party.

5. Pre-litigation mediation mandatory (August) (read our thoughts on the judgement [here](#))

In *Patil Automation Private Limited & Ors. v. Rakheja Engineers Private Limited*, the SC held that pre-litigation mediation under the Commercial Courts Act, 2015 is mandatory and any suit instituted in violation of this provision is liable to be rejected.

6. Other party's refusal to amicably settle the dispute satisfies the requirement of pre-litigation mediation (August)

In *BOLT Technology OU v. Ujoy Technology Private Limited*, the Delhi HC held that the requirement of pre-litigation mediation stands satisfied when the offer for mediation is rejected, refused and condemned by the other party.





7. Parameters to determine “urgent relief” and “urgent interim relief” (October) (read our thoughts on the judgement [here](#))

In *Mr. K Varathan v. Mr. Prakash Babu Nakundhi Reddy*, the Madras HC laid down parameters for 'urgent interim relief' in a suit, in which event pre-litigation mediation would not be required to be followed mandatorily. The HC held that 'interim' relief and 'urgent interim' relief are distinct, and one cannot escape pre-litigation mediation unless a case for the latter is made out.

8. Exclusion clauses in insurance contracts should be positively disclosed to the insured (November) (read our thoughts on the judgement [here](#))

In *Texco Marketing Private Limited v. TATA AIG General Insurance Company Ltd. & Ors.*, the SC held that exclusion clauses in an insurance contract cannot be relied by the insurer to escape its liability for reimbursement of claims arising under the contract. The SC has cautioned all the insurance companies to mandatorily disclose such clauses to the parties in good faith.

9. Commercial court can inquire into whether "urgent interim relief" is genuine or aimed to merely circumvent pre-litigation mediation (December)

In *Odisha Slurry Pipeline Infrastructure Limited & Anr. v. IDBI Bank Ltd. & Ors.*, the Calcutta HC held that under the Commercial Courts Act, 2015, the commercial courts can apply its mind and enquire into whether the circumstances for grant of “urgent interim relief” has been made out by the plaintiff through the pleadings. If it is found that the case does not involve an “urgent interim relief”, the commercial courts can reject the plaint and direct the plaintiff to first exhaust the remedy of pre-litigation mediation.

Our thoughts

One of the distinguishing features in 2022 vis-à-vis commercial litigation was the emphasis by courts on mediation as the preferred mode of dispute resolution. The Supreme Court's judgment in *Patil Automation Private Limited & Ors v. Rakheja Engineers Private Limited* determining the mandatory exhaustion of the mediation process under the Commercial Courts Act, 2015 opened the flood gates for various High Courts to pass pro-mediation judgements. The High Court upholding that the only exception for filing commercial suits without recourse to mediation is when 'urgent interim reliefs' as distinguished from 'interim reliefs', are sought was another pro-mediation step.

It should be mentioned that in December 2021, a draft Mediation Bill, 2021 was introduced in the Parliament to promote mediation and to provide for enforcement of settlement agreements resulting from mediation (*read our thoughts on the bill [here](#)*). Further, the year 2022 was characterised by Indian courts pushing away from the adversarial mode of dispute resolution to non-adversarial alternate dispute mechanisms like mediation. Hence, these judgements indeed provide some insights into the way forward for India's growing demand in the ADR field with focus on mediation and arbitration.

We are of the view that to support the court's push for mediation, adoption of correct process/ model for mandating mediation is crucial including the implementation of regulatory framework, which will foster confidence in public to substantially comply with the mandate.

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