November 2020 Vol. 1

LLC DOCTRINA

Lincoln Legal Chambers Newsletter

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INTRODUCTION

About LLC & Doctrina

Lincoln Legal Chambers is a multidisciplinary law practice in India operating from Kolkata with alliance teams in Delhi and London (UK). LLC represents domestic and foreign clients including corporate, institutional and private across diverse areas of law.

LLC Doctrina is a periodic newsletter from the Law Chambers with updates and insights about legal developments in India.

Message from the Founder

We take this opportunity to welcome all our readers and subscribers to the inaugural edition of **LLC Doctrina** - the newsletter from Lincoln Legal Chambers.

We understand that it has been a difficult year for everyone and we pray that you, your colleagues and loved ones are all staying well and have safely navigated the first wave of the pandemic.

With the safety protocols firmly entrenched in our lives as the "new normal" including social distancing and the masks, we strongly believe that our great nation has the resolve to stave off the virulent effects of the pandemic till the vaccines arrive.

As we try to keep our work families safe and operate from a virtual address in 2020 (lincolnlegalchambers.com), we bring to our readers an informative bulletin to apprise them on the recent legal news, landmark judgments, regulatory or statutory developments and other updates from the legal world.

We thank our London Alliance Head Ms. Fatima Khanom and LLC Associate (India) Ms. Safura Ahmed for their invaluable contributions to this Newsletter.

We hope our readers enjoy the inaugural issue and we look forward to publishing many more in the future.

We also thank ahead and look forward to the helpful feedback from our various readers including clients, colleagues, domestic and international peers and other third parties.

We wish all our readers and their loved ones safe health for the future.

M. Hossain
Founder & Group Head
Lincoln Legal Chambers

About Lincoln Legal Chambers

Lincoln Legal Chambers is a lateral thinking law practice that advises and represents clients in diverse areas of law across varied industry sectors.

LLC is a dynamic and technically adroit group that champions innovation. It prides itself on crafting practical and astute solutions to assist clients in taking commercially assured decisions.

The collegial work culture, cross-practice collaboration and industry experience help LLC address the strategic goals of businesses and individuals alike.

Our tremendous network of counsels positions us uniquely to be able to assist clients with their legal needs across several jurisdictions.

We rely on modern working practices and innovative tools and hence the problem solving process at LLC is structured very differently from its peers.

LLC clients vouch for its ability to provide bespoke services in an efficient manner even through virtual platforms. We always strive to achieve results far beyond the expectations.

Our philosophy is to address problems through collaborative solutions. Our industry savvy teams provide a consistent level of valuable advice to help businesses thrive. Our success is rooted to our attention to detail.

Our Teams comprise of individuals who are driven, focussed and result oriented. LLC invests in empowering bright young minds and combining them with experienced team leaders to create robust groups capable of handling complex problems.

Our clients range from large corporate houses to SME, multinational entities, emerging companies, start-ups, NGOs to even private individuals. At LLC, we advocate our clients' interests locally, nationally and even globally.

LLC's core values include integrity, consistency and accountability.

We are a result oriented and performance driven practice with a committed focus to putting clients' interests first in our every step.

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The Indian e-commerce market is unrivalled in both size and potential. Hence, it is very unsurprising that the world's top companies would be vying for pole position in this staggeringly big platform. Amazon had been ramping up operations in India for some time now while competing with other e-commerce platforms, however the e-commerce battle took a different proportion very recently with Reliance entering the fray.

In August 2020, the Future Group announced the sale of its retail, wholesale and logistic businesses to Reliance Retail Ventures, the retail arm of Reliance Industries. The Future Group is an Indian conglomerate company which owns popular brands including supermarket chains like Big Bazaar, Food Bazaar and lifestyle stores including Brand Factory and Central among others. It also has Indian franchise rights for brands like WH Smith (popular British retail giant), a 50:50 joint venture with UK based footwear firm Clarks, joint venture with French menswear retailer Celio, exclusive license for popular American footwear brand Converse, retailing agreement for English-American clothing and footwear manufacturing company Lee Cooper among others.

The conflict revolves around the $3.4 billion deal that the Mukesh Ambani led Reliance Industries Limited set up in 2020 to buy the assets of debt ridden Indian retailer Future Group. In August, 2019, Amazon had taken a stake of 49 per cent in one of Future's unlisted firms, Future Coupons. The covenants between them included Amazon's right to buy shares first into Future Retail and a non-compete clause against sale to rivals. The deal also gave a right to Amazon to acquire the entire or part of the shares of promoters of Future Retail after three years of the deal but before ten years in "certain circumstances" and subject to the law[1]. Nonetheless, it was agreed between Amazon and Future Group that in case any dispute was to arise regarding any breach of the said agreement, the matter would be taken up before the Singapore International Arbitration Centre (SIAC). It is pertinent to note that Future Coupons owns a 7.3% stake in Future Retail.

Once the deal between Reliance and Future Group was made public, Amazon decided to pursue arbitration in Singapore, the neutral venue agreed for settling any dispute as per their 2019 agreement. The Arbitration panel comprised of a sole arbitrator, the former Attorney-General of Singapore V.K. Rajah, which passed an interim injunction in favour of Amazon thereby putting the deal of Rs 25,000 crores approx. on hold. Amazon has even made written communications [2] to the Indian market regulator SEBI and stock exchanges requesting them not to approve the Reliance - Future deal in light of the Singapore arbitrator's interim order.

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[1] Digbijay Mishra & Madhav Chanchani, "Amazon sends legal notice to Future on Reliance deal – TOI", October 8, 2020 https://timesofindia.indiatimes.com/business/india-business/amazon-sends-legal-notice-to-future-on-reliance-deal/articleshow/78543652.cms

[2] https://timesofindia.indiatimes.com/business/india-business/amazon-writes-to-sebi-bourses-on-future-ril-deal/articleshow/78938988.cms#:~:text=NEW%20DELHI%3A%20E%2Dcommerce%20giant,Ltd%20while%20reviewing%20the%20proposed

AMAZON VS RELIANCE

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With Amazon receiving a favourable ruling against its partner Future Group regarding the latter's giant deal with RIL, the Singapore arbitration has not only halted the transaction for acquisition of assets and business of Future Retail but has also led to a decline in the RIL stock by 2.35%, Future Retail by 4%. Future Enterprises by 5%, Future Consumer by 5%, and Future Lifestyle Fashions by 8% respectively[3].

Amazon has argued before the SIAC that they have initiated the proceeding to enforce their contractual rights because Future Group have breached their contract. On the contrary, it has been vehemently contested by the Future Group that "Future Retail is not a party to the arbitration agreement and, as such, could not have been joined as a party to the arbitration proceedings". Future Group also argued that "The COVID-19 pandemic has hit many Indian businesses, especially in the retail sector, and the FRL-Reliance deal was aimed at protecting the interests of all stakeholders through a large infusion of funds and the acquisition of liabilities". The SIAC's interim award has barred Future Retail from disposing or encumbering any of its assets or securing any funding through a restricted party. The arbitrator has specifically stated that, "***economic hardship alone is not a legal ground for disregarding legal obligations***".

It will be interesting to see whether and how far the Singapore International Arbitration Centre's interim order favouring Amazon will stranglehold an entirely domestic Reliance – Future deal. However, as expected, one of the affected parties (Future Group) has already instituted proceedings in Delhi High Court in response to the injunction. Future Group has filed the suit in November 2020 to obtain necessary reliefs against Amazon who, according to Future, are trying to misuse the Interim Order (25th October 2020) passed by the Emergency Arbitrator, appointed by the SIAC. The Future Group have questioned the validity of the interim order on the basis that the order has been passed in an arbitration proceeding arising out of a clause in a contract to which Future Retail is not a party. It is clear from the filings made by the Future Group to the exchanges in India that they also dispute the validity of the interim order on the basis that the Emergency Arbitrator Order is not enforceable under the provisions of The Arbitration and Conciliation Act, 1996 and therefore not binding on Future Retail.

Countering Future Group's submissions in the Court, Amazon have argued that the interim order from the Emergency Arbitrator against Future Retail is valid and that accordingly it does have the right to notify statutory bodies about the existence of such order. Amazon further contend that Future Retail should have approached an Indian court upon being notified of the arbitration itself and not only upon being unsuccessful after the hearing for the interim order. Amazon's senior counsel also contended that Future Retail had fully contested Amazon before the SIAC Emergency Arbitrator and therefore it was not correct for Future Retail to claim that the award is not binding or invalid.

[3] Ravindra N. Sonavane, "RIL, Future Group stocks under pressure after interim relief to Amazon", Live mint, October 26, 2020 https://www.livemint.com/market/stock-market-news/ril-future-group-stocks-under-pressure-after-interim-relief-to-amazon-11603695539118.html

AMAZON VS RELIANCE

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Future Retail (FR) have made rejoinder arguments through their Senior Counsel Mr. Harish Salve that they are not challenging the interim award passed by the Emergency Arbitrator, but in fact praying before the Hon'ble High Court to only prevent Amazon from interfering in its contract with Reliance. Further, it has been contented by the Senior Counsel that Amazon had invested only in a company called Future Coupons Pvt. Ltd. (FCPL) and that there is no relation between them (i.e. Future Retail Limited & Amazon) because as per the Foreign Direct Investment Laws in India, a foreign company is prohibited from investing in a multi-brand retailing. It was also argued by FR Counsel that no prior approval from Amazon was required in order to transact with Reliance and that the fiduciary duty of Future Retail is towards its shareholders.

It was further argued that Amazon has deliberately mischaracterised the suit in order to confuse the court. It was contended that Amazon is trying to block Future Retail's genuine attempts to recoup from financial crisis which the latter had tried by transacting with Reliance. This was buttressed with the evidence that Amazon has sent written communications to various authorities on the basis of the Emergency Arbitrator's Interim award by making it sound like an order of the court and this conduct itself has given FRL the requisite cause of action for the instant suit before the High Court. Therefore, FRL's prayers are for injunctive reliefs as it feels the entire posturing by Amazon is fraught with vested interest and an attempt to push FRL into bankruptcy. Mr. Salve specifically argued about the FPI/FDI policy and stated that Amazon chose not to do its investment through that route as FDI in FRL would have meant prior government approval since FRL is engaged in MBRT. It was also argued that Amazon admittedly is not a shareholder in FRL and yet it seeks to claim more rights than that of a promoter/shareholder and seek to control the decision making process on the basis of contractual restraints. Mr. Salve also pointed out that Clause 15.16 of the Future Coupons Shareholder Agreement categorically claimed that Amazon's investment was not in Future Retail and that it did not seek to assume any control over Future Retail. He further argued that either this stance of Amazon as on paper was true or was merely conjured as a deception to deceive the Indian regulators.

Since the 2015 amendment to the Indian arbitration law, courts in India have tried to pursue a consistent approach of minimal intervention in cases involving foreign awards and their necessary enforcement. Therefore any block on enforcement of foreign awards have been restricted to only limited grounds. With arbitrations in foreign seats, Part II of the Indian Act is applicable which relates to enforcement of certain foreign awards in India. Under the 2015 amendment, awards are enforceable if they are passed in New York Convention territories or Geneva Convention territories. With Singapore being a New York Convention country, foreign awards passed in Singapore are enforceable in India. However, they can be challenged as per Section 48 of the Indian statute on grounds including incapacity of a party, invalidity of the agreement under the laws of the arbitration jurisdiction, procedural lapse in terms of notice to parties regarding appointment, inability of a party to represent, dispute being one which does not merit arbitration or issues outside the ambit of arbitration, incorrect or faulty tribunal compositions, award is not binding as per the venue's jurisdictional law or lastly if the award itself contravenes the public policy of India. The parameters for an Indian court to be satisfied of the unenforceability of a foreign award remain high so that refusal is perceived only as an exception.

AMAZON VS RELIANCE

Foreign Awards in India

Without the consistent approach of Indian courts pertaining to enforcement of foreign awards, businesses dealing with Indian companies would not have seen the point of keeping arbitration seats in foreign jurisdictions when they would not have faith in the foreign awards being enforced or respected within Indian shores and thus the domestic statute's effect in relation to foreign awards would lose efficacy. In India, courts can refuse enforcement of a foreign award on procedural or substantive grounds. The latter would be possible if the subject matter was non arbitrable as per Indian laws or the award passed was against public policy in India. Interpretation for the term 'public policy' has been made clearer with the 2015 amendment by the addition of two explanations to Section 48(2) which states,"Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if, — (i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or (ii) it is in contravention with the fundamental policy of Indian law; or (iii) it is in conflict with the most basic notions of morality or justice. Explanation 2.—for the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute".

After the 2015 amendment, the Courts have consistently maintained the minimal judicial intervention approach while enforcing foreign awards as done in GEA EGI Contracting Ltd v Bharat Heavy Electrical Limited[4], where the Court opined that "the scope of refusing enforcement of a foreign award on the ground that it is contrary to the public policy is very narrow. The ground that foreign award is contrary to any provision of Indian Law is not sufficient to refuse its enforcement". In **Xstrata Coal Marketing AG v Dalmia Bharat (Cement) Ltd**[5], the Court referred to Supreme Court's observation in Renusagar Power Co Ltd v. General Electric Co., that: "*Article V (2)(b) of the New York Convention of 1958 and Section 7(1)(b)(ii) of the Foreign Awards Act do not postulate refusal of recognition and enforcement of a foreign award on the ground that it is contrary to the law of the country of enforcement and the ground of challenge is confined to the recognition and enforcement being to the public policy of the country in which the award is set to be enforced. This would mean that "public policy" in Section 7(1)(b)(ii) has been used in a narrower sense and in order to attract to bar of public policy the enforcement of the award must invoke something more than the violation of the law of India.*"

While a narrower approach was discussed by the Court in **Vijay Karia v Prysmian Cavi E Sistemi**[6] where the Court opined that "if a foreign award fails to determine a material issue which goes to the root of the matter or fails to decide a claim or counter-claim in its entirety, the award may shock the conscience of the Court and may be set aside."

With Amazon and Future Group locking horns in Delhi High Court in one of 2020's most widely anticipated legal battles, the question that remains to be seen is whether this Court (and ultimately the Supreme Court where it is most likely to going to land up eventually) will apply a minimal judicial intervention or a narrower approach when examining the order passed by the Arbitrator in Singapore.

[4] (2016) 233 DLT 661
[5] 2016 SCC OnLine Del 5861
[6] 2020 SCC Online SC 177

POCSO - VICTIM TESTIMONY

POCSO Conviction Can Be Based On Sole Testimony of Victim If Reliable and Trustworthy: SC

The Hon'ble Supreme Court of India, in a latest judgment in 'Ganesan v. State Represented by its Inspector of Police'[1], has held that there can be a conviction based on the sole testimony of the victim, however, she must be found to be reliable and trustworthy. The Supreme Court bench comprised of Hon'ble Justice Ashok Bhushan, Justice M.R. Shah and Justice R. Subhash Reddy.

Background

The appellant (the accused) was tried by the learned Fast Track Mahila Court, Dharmapuri for the offences punishable under Section 7 read with Section 8 of the Protection of Children from Sexual Offences Act, 2012. The trial court, upon relying upon the deposition of the victim, sentenced the accused for three years rigorous imprisonment along with an order to pay Rupees one lakh to the victim. Aggrieved by the decision of the trial court, an appeal was preferred before the Hon'ble High Court of Judicature at Madras by the accused. The High Court partly allowed the said appeal by modifying the judgment and order passed by the learned trial court with respect to only the compensation and dismissed the appeal so far as the conviction and imposition of sentence of three years rigorous imprisonment was concerned. Hence, the Appellant had preferred to challenge the High Court's decision before the Hon'ble Supreme Court. It was argued on behalf of the Appellant (accused) that even the mother of the victim did not support the case of the prosecution and did not even lend support to the deposition of the victim.

Verdict:

In the current case, the Hon'ble Supreme Court placed reliance upon the various precedents *Vijay alias Chinee v. State of Madhya Pradesh*[2], *State of Maharashtra v. Chandraprakash Kewalchand Jain*[3], *State of U.P. v. Pappu*[4] and *State of Punjab v. Gurmit Singh*[5] among others and accordingly dismissed the appeal. It was held by the Court that, as per the settled proposition of law, there can be a conviction based on the sole testimony of the victim, however, she must be found to be reliable and trustworthy. The Supreme Court also emphasised on the case of *Krishan Kumar Malik v. State of Haryana*[6], wherein it was observed and held by this Court that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient, provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and of sterling quality.

[1] CRIMINAL APPEAL No. 680 of 2020 (Arising from S.L.P. (Criminal) No. 4976/2020)
[2] (2010) 8 SCC 191
[3] (1990) 1 SCC 550
[4] (2005) 3 SCC 594
[5] (1996) 2 SCC 384
[6] (2011) 7 SCC 130

WIFE'S RIGHT OF RESIDENCE

Supreme Court has opined that a victim wife in a domestic violence case can claim right of residence in shared household belonging to even husband's relatives

The Hon'ble Supreme Court of India, in a landmark 151 pages judgment in *Satish Chander Ahuja v. Sneha Ahuja*[1], has set aside an earlier interpretation of the definition of shared household under Section 2(s) of The Protection of Women from Domestic Violence Act, 2005. The three judge bench set aside the previous ruling in S. R. Batra and Anr. vs. Taruna Batra[2] on the basis that the earlier interpretation was "incorrect" and that the definition was quite exhaustive to provide residence right to the victim.

In S.R. Batra (supra), the Court had held that the wife was only entitled to claim a right under Section 17(1) to residence in a shared household and that a shared household would only mean a house belonging to or taken on rent by the husband, or a house which belonged to the joint family of which the husband was a member. Therefore, the S.R. Batra decision had restricted the shared household to only a household of the joint family or one in which the husband of an aggrieved person had a share. The Supreme Court, while scrutinising the provisions of the Domestic Violence statute, opined that the conditions laid down under Section 2(s) would be satisfied and the house would be termed a shared household in the scenario where the shared house belonged to a relative of the husband with whom the victim had resided together with her husband in a domestic household. The Court had specifically held, "a woman living with her husband in premises belonging to his relatives has a right to claim residence in a 'shared household'. The living of woman in a household has to refer to a living which has some permanency. Mere fleeting or casual living at different places shall not make a shared household." Another noteworthy aspect of the verdict is that the Court held that the relief granted by a criminal court under the Domestic Violence Act to the victim married woman with regard to the right to residence was a "relevant" aspect to be considered even in a civil case where the case had been filed by the house owner to seek eviction of the victim wife from the matrimonial home.

Background

The suit property was purchased by the Appellant in 1983 in his name. The Respondent wife got married to the son of the Appellant on 04.03.1995 and post married she started living in the first floor of the suit property. Till July 2004, the husband of the Respondent (wife) also lived in the first floor with the wife but thereafter due to a marital discord, the husband shifted to a guest room on the ground floor. In the suit filed by the appellant (father-in-law) for mandatory and permanent injunction, the appellant contended that he was the sole owner of the house and hence prayed for removal of the Respondent (his daughter-in-law) from the first floor of the house. The Respondent (wife) had filed a written statement in the civil suit claiming that the suit property was a shared household where the Respondent had the right to reside.

[1] Satish Chander Ahuja v. Sneha Ahuja, CIVIL APPEAL NO.2483 of 2020 (Arising out of SLP(C)No.1048 of 2020)
[2] (2007) 3 SCC 169

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Section 2(s) of the 2005 Act

Shared household is defined under Section 2(s) as, "… … a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household".

Section 17 - Right to Reside in a Shared Household

Section 17 of the 2005 Act has the provision which gives the right to every woman in a domestic relationship the right to reside in a shared household. The section states, "17. Right to reside in a shared household -(1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same. (2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law."

Section 19 - Indefeasible Right?

The Court observed that the right to residence under Section 19 of the Domestic Violence statute was not an indefeasible right of residence in a shared household especially when the daughter-in-law was pitted against aged father-in-law and mother-in-law. The Court further stated that the senior citizens in the evening of their lives were also entitled to live peacefully and not stay haunted by the marital conflict brewing between their son and the daughter-in-law. However, the Court specified that when granting reliefs under Section 12 of the 2005 Act or any civil case, the Court was supposed to balance the rights of both parties.

Lived at any stage in a domestic relationship

The Supreme Court examined the words "lives or at any stage has lived in a domestic relationship" and stated that it had to be given its normal and purposeful meaning. The Court stressed on the requirement of living to have some permanency rather than a casual living at different places as the latter would not fulfil the element of shared household. It was also opined that the intention of the parties and the nature of living including the nature of household would have to be considered to find out as to whether the parties intended to treat the premises as shared household or not.

WIFE'S RIGHT OF RESIDENCE

Supreme Court has opined that a victim wife in a domestic violence case can claim right of residence in shared household belonging to even husband's relatives

The 2005 law was enacted to safeguard the interests of women who are victims of domestic violence and hence any interpretation of the provisions would have to be done in line with the aim of the statute. Section 2(s) read with Sections 17 and 19 gives the victim woman a residence right under the shared household notwithstanding her legal interest in the property.

Question before the Supreme Court

The issue before the Supreme Court was to examine the consequences and effect of orders passed under Section 19 of the Domestic Violence to that of civil proceedings in a court of competent jurisdiction. Therefore, the Court's consideration was limited only to the orders passed under Section 19 i.e. specifically to evaluate the conflict, if any, between the orders passed in a criminal court and a civil proceeding.

The Supreme Court noted that an interim order was passed in the victim wife's favour under the 2005 Act directing the respondents in the complaint not to dispossess the wife without orders of a competent court. The suit, from which the instant appeal before the Supreme Court arose, was filed for mandatory and permanent injunction. The High Court, in the impugned Judgment, had observed that the effect of the pendency of the proceeding under the Domestic Violence Act had not been considered.

Section 17(2) contemplates eviction or exclusion of aggrieved person from a shared household only in accordance with a procedure established by law. Therefore, it is obvious that an eviction proceeding in a competent civil court is itself contemplated within the ambit of the 2005 law. The Supreme Court, in the instant judgment, opined that there is neither any express nor implied bar in the initiation of civil proceedings in a court of competent jurisdiction. However, courts, while considering any application for a residence order under the 2005 Act pursued by an aggrieved wife, has to be satisfied with evidence presented by the victim that such domestic violence has indeed taken place and only upon the satisfaction of such evidence can the residence order be passed.

Decision & Conclusion

The Supreme Court, after considering all the facts and circumstances, came to the conclusion that the pendency of any proceedings under the 2005 Act or any interim or final order passed under the said statute regarding right of residence (Section 19) was not an embargo for starting or pursuing any civil case, which relate to the subject matter of interim or final order passed in the domestic violence proceeding.

WIFE'S RIGHT OF RESIDENCE

Supreme Court has opined that a victim wife in a domestic violence case can claim right of residence in shared household belonging to even husband's relatives

The Court further opined that any order of a criminal court granting any such interim or final relief under Section 19 was relevant within the meaning of Section 43 of the Evidence Act and could be referred to and looked into by the civil court. It is clear that a civil court determines issues on the basis of evidence led by the parties during the proceedings. The Supreme Court also maintained that the suit filed in civil court for mandatory and permanent injunction was fully maintainable and issues raised by the appellant (Father-in-law) as well as the victim wife claiming a right under Section 19 needed to be decided on the basis of evidence presented in that case.

Thus, the Supreme Court, while setting aside the view taken in S.R. Batra (supra) regarding the definition of shared household, has held that a wife can claim a right to residence in a shared household belonging to not just the husband but also his relatives as long as she has resided in that household in a domestic relationship with some permanency and not in a fleeting or casual manner.

The Court further held that any civil eviction proceedings are not barred by reason of the 2005 statute but are already contemplated under the 2005 law as long as the same is done in a court of competent jurisdiction and in a procedure established by law.

Therefore, the Supreme Court upheld the decision of the High Court whereby the High Court had set aside the decree of the trial court and remanded the matter for fresh adjudication. This landmark judgment by the Supreme Court ensures that the relief granted for right to residence to a woman under the domestic violence law can be relevant in civil court proceedings too.

RIGHT TO LIVE IN SAFE BUILDING

Right of Citizens to Live In Safe Buildings Is A Facet of Right Guaranteed By Article 21: Bombay HC

The Bombay High Court has taken suo motu cognisance of a building collapse in Bhiwandi town of Maharashtra's Thane district. The bench comprising of Chief Justice Dipankar Datta and Justice GS Kulkarni registered a sou motu Public Interest Litigation (PIL) against the Seven Municipal Corporations in the Mumbai Metropolitan Region (MMR), seeking reply from all the parties including BMC and the State Government.

Some of the immediate points being considered by the court:-

- Whether municipal bodies are helpless to prevent such collapses and prevent loss of lives?
- Is there any machinery available with such municipal bodies to prevent such occurrences?
- Apart from old buildings, are newly constructed buildings also collapsing?
- Is there any specific procedure to identify such buildings which are likely to collapse?
- Is there a mechanism in place for a structural audit of the buildings?
- Is there not a need for a uniform mechanism applicable to these Municipal Corporations?
- Is there a mechanism to allocate accountability on the concerned persons, for not taking any action against illegal construction?
- Has any survey been conducted regarding unauthorised structures/buildings in each of the Municipal Corporation areas and what steps are contemplated to demolish the same?
- Whether there is a need for a public grievance cell where citizens can submit complaints?

Upon taking into consideration all the points Court held that "*These are some of the issues with which we would be concerned, our intention being that the civic bodies and the State Government take concrete and effective steps to prevent loss of innocent lives of the residents of such dilapidated or dangerous buildings. We are of the prima facie opinion that the right of the citizens to live in safe buildings and environment would be a facet of the right guaranteed by Article 21 of the Constitution of India and it would be the duty of the civic bodies to bring about a situation that all buildings within their respective municipal jurisdictions are legal, sustainable and safe. Also, in our prima facie opinion, it would be an absolute obligation of the Municipal Corporation and its officers and more particularly the Ward officers within whose jurisdiction such buildings are located and who are presumed to have complete knowledge of the conditions of the building, to take timely steps. If at the grass-root level such officers were to take effective and timely actions, such fateful incidents which have presumably occurred due to inaction and gross negligence, could have been prevented*".

CONSUMER COMMISSION - JURISDICTION AFTER RERA

Entitlement of Homebuyers Starts from Agreement Date; NOT RERA Registration: SC

A Supreme Court bench comprising of Justice UU Lalit and Justice Vineet Saran in *M/s Imperia Structures Ltd vs Anil Patni and another*[1] held that the period of allotment and entitlement for a homebuyer starts from the date of the buyer agreement and not from the date of registration of the project under the RERA - Real Estate (Regulation and Development) Act, 2016. The Court also clarified that *even under Section 18 of the RERA, the period has to be reckoned based on the agreement and not the registration*.

In this particular case, the Builder - Buyer Agreement was executed on November 30, 2013 and the project was registered under RERA only on November 17, 2017. As per the terms of the Agreement, the possession of the unit was to be handed over within *42 months* from the date of the Buyer Agreement. On non-completion of the project within the stipulated period of time as specified in the Agreement, the aggrieved buyers approached the National Consumer Disputes Redressal Commission (NCDRC) under the Consumer Protection Act, 1986. On hearing both the parties, the NCDRC decided in the favour of the buyers and ordered the builder to refund the amounts deposited by buyers with simple interest @ 9% per annum from the respective dates of deposits along with Rs.50,000/- towards costs.

Thereafter, the builder approached the Supreme Court with two specific contentions:

First Contention - RERA Registration Valid, So Project Not Delayed

Since the RERA registration was valid till December 2020, the builder argued that the project could not be said to have been delayed. Rejecting the argument, the Court rebutted that the period for allotment had in fact already expired before the RERA registration. The court stated, "*Merely because the registration under the RERA Act is valid till 31.12.2020 does not mean that the entitlement of the concerned allottees to maintain an action stands deferred*". The Court further opined that, "*… It is relevant to note that even for the purposes of Section 18, the period has to be reckoned in terms of the agreement and not the registration. … … Therefore, the entitlement of the Complainants must be considered in the light of the terms of the Builder Buyer Agreements and was rightly dealt with by the Commission.*"

Second Contention - Jurisdiction

The second important contention of the builder related to jurisdiction as it argued that once the RERA Act came into force, all questions concerning the Project, including issues relating to construction and completion thereof, would be under the exclusive control and jurisdiction of the authorities under the RERA Act. Therefore it was argued that the Commission ought not to have entertained the consumer complaints and was hence acting outside its jurisdiction.

[1] CIVIL APPEAL NO. 3581-3590 OF 2020

CONSUMER COMMISSION - JURISDICTION AFTER RERA

Entitlement of Homebuyers Starts from Agreement Date; NOT RERA Registration: SC

Court's Conclusion

The Bench therefore needed to consider as to whether the remedy provided under the RERA Act to an allottee was the only and exclusive modality to raise a grievance and whether the provisions of the RERA Act barred consideration of the grievance of an allottee by any other legal forum. The Supreme Court, on explaining the provisions under RERA, stated that *Section 79 of the RERA Act bars jurisdiction of a Civil Court to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered under the RERA Act to determine. Section 88 specifies that the provisions of the RERA Act would be in addition to and not in derogation of the provisions of any other law, while in terms of Section 89, the provisions of the RERA Act shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force.*

The Court referred to *Malay Kumar Ganguli vs. Dr. Sukumar Mukherjee*[2], where it was held by this Court that "*The proceedings before the National Commission are although judicial proceedings, but at the same time it is not a civil court within the meaning of the provisions of the Code of Civil Procedure. It may have all the trappings of the civil court but yet it cannot be called a civil court.*" In light of the said decision, it was opined by this Bench that Section 79 of the RERA Act did not in any way bar the Commission under the provisions of the CP Act to entertain any complaints by aggrieved buyers.

The Court also referred to the decision in *Pioneer Urban Land and Infrastructure Limited and Anr. vs. Union of India and Anr.*[3], where a bench of three Judges of the Supreme Court considered the provisions of Insolvency and Bankruptcy Code, 2016, RERA Act and other legislations including the provisions of the Consumer Protection Act. It was held there that, "*100. RERA is to be read harmoniously with the Code, as amended by the Amendment Act. It is only in the event of conflict that the Code will prevail over RERA. Remedies that are given to allottees of flats/apartments are therefore concurrent remedies, such allottees of flats/apartments being in a position to avail of remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code.*"

The Supreme Court, after hearing all the submissions made by the Appellant Builder, including specifically related to the jurisdiction of the Consumer Commission, held that the proceedings initiated by the complainants (buyers) and the resultant actions including the orders passed by the Commission were fully saved. Further, it was also held that the entitlement of the homebuyers originated from the date of agreement and the entitlement of the allottees could not be considered to be deferred just because the RERA registration was taken later after the expiry of the allotment date; and the allottees' legal action could not be challenged on the ground that the RERA registration was still valid at the time. Accordingly, the Complainants were entitled to execute the orders passed by the Commission in their favour in accordance with law.

[2] (2019) 8 SCC 416
[3] (2009) 9 SCC 221

DELAY IN DELIVERY OF REASONED JUDGMENT

SC Issues Reminder to High Courts: Delay in Delivery Violates Fundamental Right to Life

The Supreme Court had laid down a guideline almost two decades back for high courts and trial courts to ensure promptness in providing reasons behind judgments but its breach has prompted a recent Supreme Court bench to not only take note of the delay but also issue a reminder by circulating the said order to all High Courts. In a recent matter (*Balaji Baliram Mupade & Anr. vs. The State of Maharashtra & Ors.*)[1], whilst considering the appeal filed against an order passed by the Aurangabad Bench of the Bombay High Court, the Supreme Court bench comprising of Justice Sanjay Kishan Kaul and Justice Hrishikesh Roy observed that the operative part of the order was pronounced on January 21, 2020 and the reasons were published on October 09, 2020 i.e. after nine months.

This instance led the Supreme Court to remind the High Courts that delay in delivery of reasoned judgements violated Right to Life under Article 21 of the Constitution of India because it deprives any aggrieved party of the opportunity to seek further judicial redressal in the next tier of judicial scrutiny.

The Court also referred to a 1983 Supreme Court Judgement, where a Constitutional Bench in the *State of Punjab & Ors. v. Jagdev Singh Talwandi* [2] drew the attention of the High Courts to the serious difficulties which were caused on account of a practice which was increasingly being adopted by several High Courts, that of pronouncing the final orders without a reasoned judgment. The Supreme Court pointed out and reproduced the paragraphs where the Constitutional Bench in Jagdev Singh Talwandi (supra) had stated, "… … that the final order which the High Court intends to pass should not be announced until a reasoned judgment is ready for pronouncement… If the object of passing such orders is to ensure speedy compliance with them that object is more often defeated by the aggrieved party filing a special Leave Petition in this Court against the order passed by the High Court. That places this Court in a predicament because, without the benefit of the reasoning of the High Court, it is difficult for this Court to allow the bare order to be implemented. The result inevitably is that the operation of the order passed by the High Court has to be stayed pending delivery of the reasoned judgment."

The Supreme Court in *Anil Rai v. State of Bihar* [3] had also provided some guidelines regarding the pronouncement of judgments with the expectation that they shall be followed by all concerned under the mandate of the Supreme Court. It was stated therein that normally a judgment is expected within two months of the conclusion of the arguments, and on expiry of three months any of the parties involved could file an application in the High Court with prayer for early judgment. And if for any reason no judgment was pronounced for six months, any of the parties would be entitled to move an application before the then Chief Justice of the particular High Court with a prayer to re-assign the case before another Bench for fresh arguments.

[1] CIVIL APPEAL NO.3564/2020
[2] 1984 (1) SCC 596
[3] 2001 (7) SCC 318

DELAY IN DELIVERY OF REASONED JUDGMENT

SC Issues Reminder to High Courts: Delay in Judgment Delivery Violates Fundamental Right to Life

In *Balaji Baliram Mupade* (supra), the current Supreme Court bench observed,

"*We must note with regret that the counsel extended through various judicial pronouncements including the one referred to aforesaid appear to have been ignored, more importantly where oral orders are pronounced. In case of such orders, it is expected that they are either dictated in the Court or at least must follow immediately thereafter, to facilitate any aggrieved party to seek redressal from the higher Court. The delay in delivery of judgments has been observed to be a violation of Article 21 of the Constitution of India in Anil Rai's case (supra) and as stated aforesaid, the problem gets aggravated when the operative portion is made available early and the reasons follow much later.*"

The bench directed the circulation of its 29th October 2020 Order to all High Courts as a reminder by noting that, "*We are constrained to pen down a more detailed order and refer to the earlier view on account of the fact that recently a number of such orders have come to our notice and we thought it is time to send a reminder to the High Courts.*"

The Bench also disapproved the period of nine months between the operative portion of the order and actual disclosure of the reasons for the order itself. It stated, "*This is much more than what has been observed to be the maximum time period for even pronouncement of reserved judgment as per Anil Rai's case (supra).*

The appellant undoubtedly being the aggrieved party and prejudiced by the impugned order is unable to avail of the legal remedy of approaching this Court where reasons can be scrutinized. It really amounts to defeating the rights of the appellant to challenge the impugned order on merits and even the succeeding party is unable to obtain the fruits of success of the litigation."

The Supreme Court set aside the High Court order and asked the Aurangabad bench (which does not comprise of the previous judges) to hear the particular case afresh while at the same time giving protection to the litigant against any coercive action from the Maharashtra government.

REGULATORY REGIME NEEDED FOR USING UV RAYS

SC tells Centre to ban or regulate use of UV Rays & Disinfectants on humans

A Writ Petition[1] was filed in June 2020 in the public interest under Article 32 of the Constitution of India seeking direction to forthwith ban spraying of all kinds of disinfectants on human beings which was being done as a measure of safeguard against the Novel Coronavirus 2019 (Covid19).

The Petitioner claimed that, although the Ministry of Health and Family Welfare, GOI, has not approved the use of any self-claimed organic or Ayurvedic disinfectant for spraying or fumigation purpose or approved any chemical disinfectants on human body but a lot of organisations/public authorities are using chemical disinfectants for spraying and fumigation and no necessary steps have been taken by the Union of India. It was also contended by the Petitioner that the concept of 'Human Disinfection' through walk-in tunnel was flawed and misconceived and be not permitted at any cost in the light of Right to Health under Article 21.

The Writ Petitioner referred to the advisory dated 18.04.2020 and the press release dated 23.04.2020 issued by CSIRNCL (Council Of Scientific And Industrial Research-National Chemical Laboratory), Pune ICT, Mumbai, wherein the tunnels for such external body surface sanitisation of personal walk was recommended.

A publication from WHO was relied upon wherein it was clearly stated that spraying or introducing bleach or other disinfectants on human bodies could not protect against Covid19 and could actually be dangerous to humans. Quoting WHO, it was pleaded that the Ultraviolet (UV) Lamps should not be used to disinfect the hands and other areas of the skin.

Reference has also been made to the advanced disinfectant tunnel that was being developed jointly by the Indian Institute of Technology, Kanpur and the Artificial Limb Manufacturing Corporation of India.

The Petitioner submits that although the Ministry of Health & Family Welfare, through its advisory dated 18.04.2020, had stated that spraying of disinfectant on human beings was not recommended but the Union of India had not taken any step to stop the use, advertisement and/or sale of chemical based disinfection tunnels.

The petitioner submits that there was no study in the world by any credible health agency which stated that human disinfection tunnels were effective against Covid-19 virus. It was submitted that on the contrary there are sufficient health advisories by WHO and other international agencies that claim tunnels are counterproductive and harmful for human health. Further that, there has been no advisory issued by the government which recommended usage of any organic solution for spraying on human body against the Covid19 pandemic.

[1] WRIT PETITION (C) NO.560 OF 2020

REGULATORY REGIME NEEDED FOR USING UV RAYS

SC tells Centre to ban or regulate use of UV Rays & Disinfectants on humans

The petitioner also submits that the concept of "human disinfection" through walk in tunnel is flawed and misconceived and be not permitted at any cost in light of Right to Health under Article 21 of the Constitution.

The Supreme Court, while disposing the Writ Petition, urged the Central Government to invoke the powers under the Disaster Management Act 2005 to consider banning or regulating the usage of disinfection tunnels involving spraying or fumigation of chemical/organic disinfectants for the human beings and issued the following directions:-

1. "The respondent No.1 may consider and issue necessary directions in exercise of powers vested in it under the Disaster Management Act, 2005, regarding ban/Regulation on the usage of disinfection tunnels involving spraying or fumigation of chemical/organic disinfectants for the human beings. Or,
2. There shall be similar consideration and directions by the respondents as indicated above with regard to exposure of human being to artificial ultraviolet rays.
3. Looking to the health concern of the people in general, the aforesaid exercise be completed by respondent No.1 within a period of one month."