

AS PASSED BY LOK SABHA
ON 18 DECEMBER, 2009

Bill No. 139-C of 2009

THE COMMERCIAL DIVISION OF HIGH COURTS BILL, 2009

A

BILL

to provide for the constitution of a Commercial Division in the High Courts for adjudicating commercial disputes and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Commercial Division of High Courts Act, 2009.
- (2) It extends to the whole of India, except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Short title,
extent and
commencement.

Provided that different dates may be appointed for different High Courts and for different provisions of this Act and any reference in any such provision to the High Court or to the commencement of this Act shall be construed as a reference to that High Court or the commencement of that provision:

Provided further that no notification under this sub-section shall be issued in relation to a High Court unless the Central Government has consulted the Chief Justice of the concerned High Court and the concerned State Government or State Governments.

Definitions.

2. (1) In this Act, unless the context otherwise requires,—

(a) “commercial dispute” means a dispute arising out of ordinary transactions of merchants, bankers and traders such as those relating to enforcement and interpretation of mercantile documents, export or import of merchandise, affreightment, carriage of goods, franchising, distribution and licensing agreements, maintenance and consultancy agreements, mercantile agency and mercantile usage, partnership, technology development in software, hardware, networks, internet, website and intellectual property such as trademark, copyright, patent, design, domain names and brands and such other commercial disputes which the Central Government may notify.

Explanation I.— A dispute, which is commercial, shall not cease to be a commercial dispute merely because it also involves action for recovery of immovable property or for realisation of monies out of immovable property given as security or for taking any other action against immovable property.

Explanation II.— A dispute which is not a commercial dispute shall be deemed to be a commercial dispute if the immovable property involved in the dispute is used in trade or put to commercial use.

Explanation III.— An application under section 34 or section 36 or an appeal under section 37 of the Arbitration and Conciliation Act, 1996 shall be deemed to be a commercial dispute if the amount in dispute or claim relates to a specified value; 26 of 1996.

(b) “Commercial Division” means the Commercial Division in a High Court constituted under section 3;

(c) “High Court” has the meaning as assigned to it in clause (14) of article 366 of the Constitution;

(d) “notification” means a notification published in the Official Gazette and the expression ‘notify’ with its cognate meanings and grammatical variations shall be construed accordingly;

(e) “specified value” has the meaning as assigned to it in section 7.

(2) Any reference in this Act to the Code of Civil Procedure, 1908 or any provision thereof which is not in force in any area to which this Act applies shall be construed to have a reference to the corresponding enactment or provision thereof in force in such area. 5 of 1908.

(3) Words and expressions used herein and not defined but defined in the Code of Civil Procedure, 1908 shall have the meanings assigned to them in that Code. 5 of 1908.

CHAPTER II

CONSTITUTION AND JURISDICTION OF COMMERCIAL DIVISION OF HIGH COURTS

Constitution of Commercial Division of High Courts.

3. (1) A High Court may, by order, constitute a division to be called the “Commercial Division” of that High Court having one or more Division Benches.

(2) The Judges of the Commercial Division shall be such of the Judges of the High Court as the Chief Justice of that High Court may, from time to time, nominate.

Jurisdiction of High Court and allocation of matters to Commercial Division.

4. (1) Notwithstanding anything contained in any law for the time being in force, after the issuance of an order under sub-section (1) of section 3 by a High Court, all suits relating to commercial disputes of specified value shall be filed in the High Court and such suits shall be allocated to the Commercial Division of that High Court.

(2) All execution proceedings, arising out of the suits referred to in sub-section (1) and arising out of the matters specified in sections 11 and 12, shall be disposed of by the Commercial Division of the High Court.

Explanation.— For the purposes of this section, “High Court” means the High Court exercising jurisdiction over the court of ordinary civil jurisdiction in which the suit or application could have, but for the provisions of this Act, been filed.

- 26 of 1996. **5.** (1) Notwithstanding anything contained in the Arbitration and Conciliation Act, 1996, after issuance of an order under sub-section (1) of section 3 by a High Court,—
- Jurisdiction and procedure of Commercial Division in arbitration matters.
- (a) all applications under sections 34 and 36; and
- (b) all appeals under clause (a) of sub-section (1) or sub-section (2) of section 37,

of that Act relating to commercial disputes of specified value shall be filed in the High Court and every such application or appeal, as the case may be, shall be allocated to the Commercial Division of that High Court.

- 26 of 1996. (2) Every application under section 34 or section 36 of the Arbitration and Conciliation Act, 1996 relating to commercial disputes of specified value, pending in any Court subordinate to a High Court immediately before the issuance of any order under sub-section (1) of section 3 shall stand transferred to the High Court and shall thereafter be allocated to the Commercial Division of that High Court.

- 26 of 1996. (3) Every application under section 34 or section 36 or an appeal under section 37 of the Arbitration and Conciliation Act, 1996 relating to commercial disputes of specified value, pending in the High Court immediately before the issuance of an order under sub-section (1) of section 3, shall, on the issuance of such order, be allocated to the Commercial Division of that High Court.

(4) Every application or appeal referred to in this section shall be disposed of by the Commercial Division as expeditiously as possible and endeavour shall be made to dispose of the matter within one year from the date of service of notice on the opposite party.

(5) The applicants or appellants in respect of the matters referred to in sub-section (1) shall, within sixty days from the date of service of notice on the opposite party, file paper books containing relevant documents including copies of oral evidence recorded, if any, and the opposite party shall likewise file a paper book within sixty days from the date of service of notice on such party.

(6) The applicants or appellants in respect of the matters referred to sub-section (2) and the opposite parties shall file paper books within sixty days from the date of service of notice on such parties or from the date of issuance of the order under sub-section (1) of section 3, whichever is later.

(7) Within thirty days from the date of filing of the paper books, all parties to the proceedings shall file brief written submissions after exchanging copies of the same.

(8) Where any party fails to comply with the time limits referred to in sub-sections (5) to (7), the Commercial Division may, if reasonable cause is shown, extend the time limit for a further period not exceeding thirty days, subject, however, to such order as to costs as the Commercial Division may deem fit.

6. Notwithstanding anything contained in section 4, the Commercial Division of a High Court shall not entertain or decide any suit, application or revision application or proceeding relating to any commercial dispute in respect of which the jurisdiction of the civil court is either expressly or impliedly barred under any other law for the time being in force.

Exclusion of jurisdiction of Commercial Division.

CHAPTER III

SPECIFIED VALUE AND ITS DETERMINATION

7. (1) For the purposes of this Act, “specified value”, in relation to a matter before a High Court, means such value of the subject matter of the commercial dispute in a suit,

Definition of specified value.

appeal or application which is not less than five crore rupees or such higher value as the Central Government may, in consultation with the Government of the State or States to which the jurisdiction of the High Court extends, notify.

(2) Every notification issued under sub-section (1) shall be laid, as soon as may be, after it is made, before each House of Parliament.

Determination of specified value of subject matter of commercial disputes in a suit.

8. (1) The specified value of the subject matter of the commercial dispute in a suit or appeal or application shall be determined in the following manner, namely:—

(a) where the relief sought in a suit, appeal or application is for recovery of money, the money sought to be recovered in the suit or appeal or application inclusive of interest, if any, computed up to the date of filing of the suit, appeal or application, as the case may be, shall be taken into account for determining such specified value;

(b) where the relief sought in a suit or appeal or application relates to movable property or to a right therein, the market value of the movable property as on the date of filing of the suit, appeal or application, as the case may be, shall be taken into account for determining such specified value;

(c) where the relief sought in a suit, appeal or application relates to immovable property or to a right therein, the market value of the immovable property, as on the date of filing of the suit, appeal or application, as the case may be, shall be taken into account for determining specified value;

(d) where the relief sought in a suit, appeal or application relates to any other intangible right, the market value of the said rights as estimated by the plaintiff shall be taken into account for determining specified value;

(e) where the counter-claim is raised in any suit, appeal or application, the value of the subject matter of the commercial dispute in such counter-claim as on the date of the counter-claim shall be taken into account.

(2) Where, in a suit, application, revision application or appeal filed in a High Court, or transferred to the High Court in accordance with the provisions of this Act or pending before the High Court, a dispute arises as to whether the subject matter of such suit, application, revision application or appeal, as the case may be, is a commercial dispute or not or such commercial dispute is of specified value or not, then, the said dispute shall be decided by the Commercial Division of that High Court.

(3) Where the Commercial Division of a High Court upon reference to it under sub-section (2) and after hearing the parties comes to conclusion,—

(a) that the subject matter is a commercial dispute and the value of the subject matter in the commercial dispute in a suit, appeal or application is equal to the specified value so as to fall within the pecuniary jurisdiction of the Commercial Division, the suit, appeal or application (together with the counter claim, if any) shall be dealt with by the Commercial Division of the High Court;

(b) that the value of the subject matter in commercial dispute in a suit, appeal or application is less than the specified value and does not fall within the preliminary jurisdiction of the Commercial Division, the suit, appeal or application (together with the counter claim, if any) shall remain where it is pending before such conclusion of the High Court.

(4) The manner of valuation and determination of the subject matter of commercial dispute in a suit, appeal or application under this Act shall override any provision for valuation of the subject matter of any suit under any law for the time being in force.

CHAPTER IV

PROCEDURE TO BE FOLLOWED BY COMMERCIAL DIVISION OF HIGH COURTS

5 of 1908. **9.** (1) Except to the extent otherwise provided by or under this Act, the Commercial Division of a High Court shall follow the procedure specified in the Code of Civil Procedure, 1908.

Fast Track Procedure to be followed by Commercial Division of High Court.

(2) Notwithstanding anything contained in sub-section (1), the following procedure shall be followed by the Commercial Division of every High Court, in respect of the subject matter of commercial dispute of specified value in a suit which is filed on or after the commencement of this Act, namely:—

(a) the plaintiff shall file along with the plaint,—

(i) the documents on which he sues or relies;

(ii) as many copies of the plaint and documents referred to in this clause as to the number of defendants;

(iii) an affidavit containing his statement in examination-in-chief;

(iv) affidavits containing statements of other witnesses in examination-in-chief;

(v) brief issues that are likely to arise;

(vi) list of interrogatories, if any;

(vii) application for discovery and production of documents, if any, maintaining their relevancy;

(viii) such other material as the plaintiff may consider necessary;

(ix) full address, including e-mail, fax and telephone number of all the claimants and defendants to the extent known to the plaintiff;

(b) the plaintiff shall furnish along with the plaint, requisite fee for service of summons on the defendants;

5 of 1908. (c) where the plaintiff has furnished electronic mail addresses of the defendants, he shall be directed by the Commercial Division, without any prejudice to the procedure for delivery of summons referred to in Order V of the Code of Civil Procedure, 1908, to send the summons along with the copy of the plaint to the defendant by electronic mail;

(d) the defendants shall, within a period of one month from the date of receipt of the copy of the plaint along with all the relevant documents, file his written statement along with all documents except copies of plaint referred to in clause (a);

(e) the defendants shall, along with the written statement, also file counter-claim, if any, along with all documents except the copies of plaint or documents referred to in clause (a);

(f) the defendants shall, along with the written statement, also file counter-claim, if any, along with all documents, except the copies of plaint, referred to in clause (a);

(g) the defendants shall also send, copies of written statement and all documents filed along with the written statement, to the plaintiff;

(h) the plaintiff shall, at the time of trial, file affidavit containing evidence in examination-in-chief of other witnesses, if any;

(i) the plaintiff may, within fifteen days of service of the written statement, apply to the Commercial Division for granting leave for filing of rejoinder;

(j) the plaintiff shall file rejoinder within one month from the date of the order of the Commercial Division granting leave to file such rejoinder;

(k) where the Commercial Division allows any application for discovery of documents, plaintiff and the defendants, as the case may be, shall be permitted to file supplementary statements, within a period as may be specified by the Commercial Division.

(3) For the purposes of recording of statement in cross-examination and re-examination of parties and witnesses, the Commercial Division may appoint an advocate of not less than twenty years standing at Bar or a Judicial Officer not below the rank of Senior Civil Judge as Commissioner.

(4) In a case before the Commercial Division,—

(a) all parties shall file written submission before the commencement of oral submission;

(b) the time limits for making submissions (including oral submission) shall be fixed in advance, at the case management conference.

(5) The Commercial Division shall, within thirty days of the conclusion of argument, pronounce judgment and copies thereof shall be issued to all the parties to the dispute through electronic mail or otherwise.

Case management conference and examination of witnesses.

10. (1) Save as otherwise provided under this Act, a single judge sitting in the Commercial Division may—

(a) hold one or more case management conferences;

(b) fix a time schedule for finalisation of issues, cross-examination of witnesses, filing of written submission and for oral submission;

(c) provide for record of evidence in cross-examination and re-examination;

(d) appoint commissioner for recording of cross-examination or re-examination provided any order for the purpose of fixing limits which may lead to the disposal of the matter for default or *ex parte*, shall be passed by a Bench of two Judges.

(2) Any objection as to the admissibility of any evidence may be recorded by single judge but shall be decided by the Bench of two Judges sitting in the Commercial Division.

CHAPTER V

TRANSFER OF PENDING SUITS, APPLICATIONS OR PROCEEDINGS TO COMMERCIAL DIVISION OF THE HIGH COURT

Transfer of suits, applications or other proceedings from courts subordinate to a High Court to such High Court.

11. All suits, applications or proceedings relating to commercial disputes of specified value pending in the courts subordinate to a High Court shall, on the issuance of an order under sub-section (1) of section 3, stand transferred to the High Court having jurisdiction over such courts and shall thereafter be allocated to the Commercial Division of such High Court.

Allocation of suits, applications or other proceedings pending in a High Court to its Commercial Division.

12. The following suits, applications or proceedings in which the subject matter of commercial dispute is equal to specified value and pending in every High Court shall, on the issuance of an order under sub-section (1) of section 3, be allocated to its Commercial Division, namely:—

(i) all suits wherein subject matter of the commercial dispute in such suit is of specified value;

(ii) all appeals against decrees by courts subordinate to the High Court wherein subject matter of the commercial dispute in such appeal is of specified value;

(iii) appeals against a judgment of a single judge on the original side of the High Court wherein subject matter of the commercial dispute in such appeal is of specified value;

(iv) appeals against orders passed in interlocutory applications in suits, by courts subordinate to the High Court, wherein subject matter of the commercial dispute in such appeal is of specified value;

5 of 1908. (v) revision applications filed under section 115 of the Code of Civil Procedure, 1908, for setting aside interlocutory orders of the courts subordinate to the High Court, wherein subject matter of the commercial dispute in such revision application is of specified value;

(vi) applications under article 226 or article 227 of the Constitution filed for setting aside or quashing the interlocutory orders passed by courts subordinate to the High Court, wherein subject matter of the commercial dispute in such application is of specified value.

CHAPTER VI

MISCELLANEOUS

13. (1) In respect of suits of the category referred to in sub-section (1) of section 4, section 5, section 11 and clause (i) of section 12, an appeal shall lie to the Supreme Court against any decree passed by the Commercial Division. Appeal to Supreme Court.

5 of 1908. (2) An appeal shall lie to the Supreme Court against the orders of the Commercial Division referred to in clauses (a) to (w) of Rule 1 of Order XLIII of the Code of Civil Procedure, 1908.

5 of 1908. *Explanation.*— In this section, the word “decree” shall include all decrees which are to be treated as decrees for purposes of Rule 4 of Order XXI, Rule 58 and Rule 103 of Order XXI of the Code of Civil Procedure, 1908.

5 of 1908. **14.** The decrees or orders passed by the Commercial Division shall be executed by the said Division and the provisions of the Code of Civil Procedure, 1908 relating to execution of decree or order shall, so far as may be, apply to the Commercial Division. Execution of decrees or orders.

15. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force. Application of other laws not barred.

16. Save as otherwise provided, the provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. Act to have overriding effect.

17. The High Court may, by notification, make rules for carrying out the provisions of this Act. Power of High Court to make rules.

18. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as may appear to it to be necessary for removing the difficulty: Power to remove difficulties.

Provided that no such order shall be made under this section after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament.

Amendment
of Act 26 of
1996.

19. In the Arbitration and Conciliation Act, 1996,—

(a) in section 2, in sub-section (1), for clause (e), the following clause shall be substituted, namely:—

‘(e) “Court”, in relation to,—

(i) sections other than sections specified in sub-clause (ii), means—

(a) the principal Civil Court of original jurisdiction in a district,

or

(b) any Court of co-ordinate jurisdiction to which the Court referred to in sub-clause (a) transfers a matter brought before it,

and includes the High Court in exercise of its original jurisdiction to decide the questions forming the subject matter of the arbitration if the same had been the subject matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes ; and

(ii) sections 34, 36 and 37 where the arbitration is relating to commercial disputes of specified value, means the Commercial Division of the High Court constituted under sub-section (1) of section 3 of the Commercial Division of High Court Act, 2009.’.

(b) in section 37, in sub-section (1), in clause (b), the following proviso shall be inserted, namely:—

“Provided that where the arbitration relates to a commercial dispute of specified value, the appeal shall lie to the Supreme Court in accordance with the provisions contained in section 13 of the Commercial Division of High Courts Act, 2009.”.

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adjudicating commercial disputes and for matters connected therewith
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(As passed by Lok Sabha)