

Commercial Court Act and it's Practical Challenges

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INTRODUCTION

India Journey from underdeveloped country to developed Country and now we all are working towards to bring the country in the list of developed country. It has never been possible in a day. It is known to that since 1991, when the economy was significantly opened to foreign investment, government policies have undergone radical changes. The adoption of privatization, liberalization, and globalization has provided a substantial boost to the economy. However, it has also made the world increasingly competitive. Therefore, it is but natural when Foreign investors will enter in India and any conflict crops up then one need to be assured that Indian courts operate as efficiently as those in the most developed countries, with no prolonged delays in the judicial process.

LAW COMMISSION REPORT

In its 188th Report, titled “*Proposals for Constitution of Hi-tech Fast-Track Commercial Divisions in High Courts*”, the Commission reviewed international practices of establishing commercial courts to handle high-value or complex commercial cases. The report emphasized the need for such courts in India to assure investors that high-value commercial disputes would be directly addressed by specialized Commercial Divisions in High Courts. These divisions would adopt fast-track procedures similar to those proposed in the 176th Report on the “*Arbitration and Conciliation (Amendment) Bill, 2002*”. Additionally, they would be equipped with advanced video conferencing facilities, akin to those utilized in commercial courts globally. There was indeed a necessity for such courts in India, the Commission recommended setting up a Commercial Division in each of the High Courts of India. The purpose of the Commercial Division would be to expedite commercial cases of high pecuniary value.

The Commission has recommended for the “fast track procedure” was prescribed for the disposal of suits in the Commercial Division, providing timelines for the filing of pleadings; recording of evidence; and delivery of judgment by the Bench. Even the report discussed about the formulation courts and Judges.

On the basis of the above recommendations of the Commission, the Lok Sabha introduced the Bill as “Bill No. 139 of 2009” on **16th December 2009**, and passed it on 18th December 2009, the following points have been included:

1. The procedure to be followed by the Commercial Division was laid down in the Bill, overriding the provisions of the Code of Civil Procedure, 1908.
2. The “specified value” of a suit, necessary to vest jurisdiction in the Commercial Division

3. The jurisdiction of the tribunals and other forums were not to be affected by the jurisdiction of the Commercial Division of High Courts.
4. A single Judge sitting in the Commercial Division was also empowered to hold case management.

After lot of discussion, **The Commercial Court Act 2015** has been passed and it came into the force on October 23, 2015. The Act has focused on the Time limit and speedy disposal of the matters. There have been amendments in CPC due to it. Few of the important amendments are :-

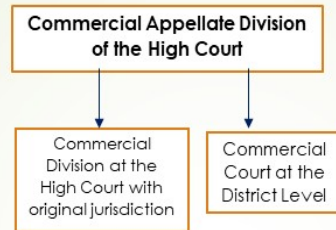
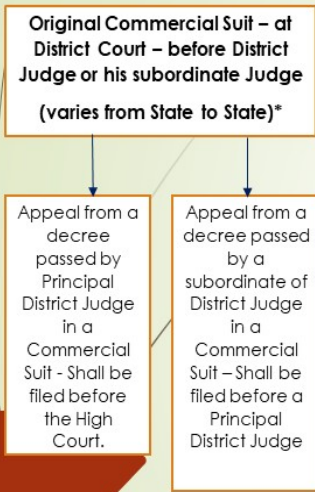
- ☐ **Order VI Rule 15 A:-** Verification of Pleadings in a commercial Dispute:-
- ☐ Rule (5) The court may strike out a pleading which is not verified by a statement of Truth namely, the statement set out in the Appendix to this Schedule.
- ☐ **Order VII Rule 2A:-** Where interest is sought in the suit
- ☐ **Order VIII Rule 1:- Written Statement**
- ☐ **Order VIII Rule 5 Specific Denial**
- ☐ **Order XI Disclosure, Discovery and inspection**

Following orders of CPC will not be apply in Commercial Court Matters

- ☐ **Order XIII Rule 1:-** Original documents to be produced at or before the settlement of issues
- ☐ **Order VII Rule 14:-** Production of documents on which plaintiff sues or relies
- ☐ **Order VIII Rule 1 A:-** Duty of defendants to produce documents upon which relief is claimed or relied upon by him
- ☐ Order XIII- A Summary Judgement and Order XV-A Case Management Hearing
- ☐ **Order XX Judgement and decree**

The Hierarchy of the courts have been demonstrated in the tabular form: -

HIERARCHY OF COMMERCIAL COURTS



COURTS & DIVISIONS CONSTITUTED UNDER THE ACT
Commercial Courts below the District Judge level
Commercial Courts at the District Level
Commercial Division at the High Courts
Commercial Appellate Division at the District Level
Commercial Appellate Division in the High Court

- The Act provides for establishment of Commercial Division in five High Courts, which have ordinary original jurisdiction. The States wherein the High Courts have original jurisdiction are:

- Calcutta
- Bombay
- Madras
- Delhi
- Himachal Pradesh

- The Act further provides the framework for establishment of Commercial Appellate Divisions in all the High Courts, wherein the Courts shall be entitled to entertain appeals arising from the Commercial Courts at the High Court level.

In the Commercial Court, most of the proceeding been in specific time frame:-

PROCEDURE & TIMELINES PRESCRIBED

STAGE	TIMELINE PROVIDED	PROVISION
Filing of Written Statement	30 days from the date of Service. It can be extended upto 120 days and no further extension is permissible.	Order V Rule 1, Order VIII Rule 1 & 10
Inspection	30 days from the date of filing of Written Statement. It can be extended for another 30 days but no further extension is permissible.	Order XI Rule 3
Admission & Denial	Within 15 days from the date of completion of inspection <u>OR</u> a further date as directed by the Court.	Order XI Rule 4
Notice of Production	A period of 7 to 15 days is to be granted to produce <u>OR</u> to state inability to produce.	Order XI Rule 5

STAGE	TIMELINE PROVIDED	PROVISION
Judgment	90 days from the date of conclusion of arguments.	Order XX Rule 1
Appeal	60 Days from the date of the Order or Judgment.	Section 13

SAFEGUARD PROVISIONS AGAINST DELAYS:

- Bar on Revisional Powers against the Interlocutory Orders of a Commercial Court [Section 8].
- Bar of jurisdiction of Commercial courts an Commercial Divisions (Section 11)
- Bar against Appeal/Revision against the Order of a Commercial Court/Division that it had jurisdiction to entertain a commercial dispute [Section 12(3)].
- No. of Adjournments – Implementation and Monitoring - Order XVII Rule 1 , Code of Civil Procedure, 1908.

AMENDMENT IN 2018

However, in the year 2018, there has been one amendment took place in the Commercial Court Act, which lead insertion of Section 12 A in the Act. Pre- Institution Mediation and Settlement. It has emphasized on the Mediation and it states that for any matter in which there has no any urgent interim relief, then Plaintiff has to exhaust the remedy of Pre-institution Mediation. However, on July 3,2018 The Commercial Courts (Pre-Institution Mediation and Settlement) Rules 2018 has been enacted. The Rules further state that, Mediation petition has to be filed before the Authority ,i.e. for district, there is District Legal Service Authority. The Court fee of Rs. 1000 to be paid along with the Petition. The mode of payment of the Court fee by way of Demand Draft or Through Online. The Opposite party has to give the consent for the appointment of the Mediator and then parties have to pay the Mediation fee which is to be shared equally. The mediation fee will be paid as per the quantum of claim. The Rule further state that if the opposite party doesn't turn up then the Authority will issue the Non-Starter report.

The said process has to be completed within a period of **three months** from the date of filing of the Application, extendable for a further period of **two months** with the consent of the parties involved.

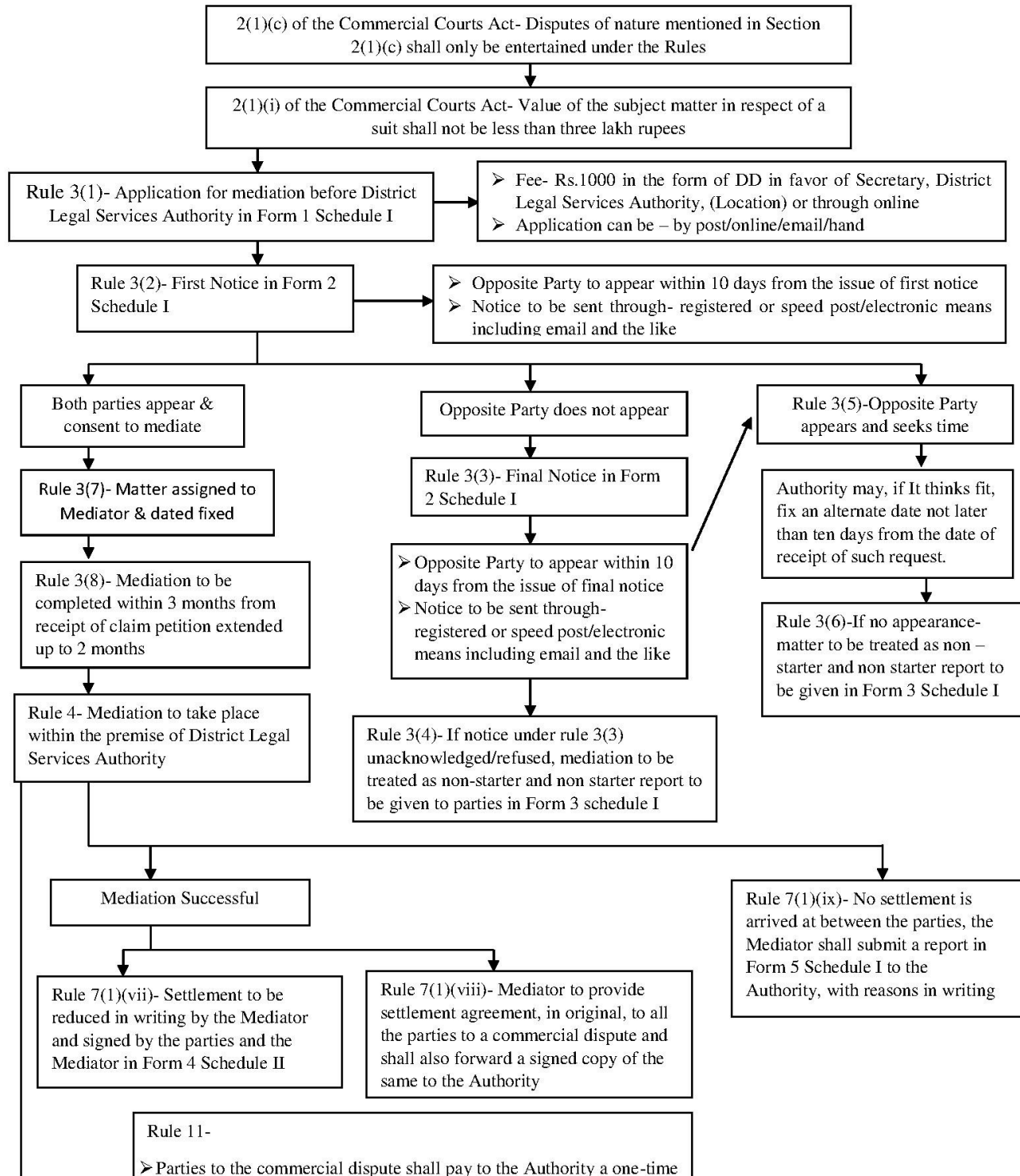
The stages of Pre-Institution Mediation and Settlement Rules have been captured in the Tabular form:-

Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018

Procedure and Compliances (Stage wise)

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**Rules mean Rules of Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018*



JUDGEMENTS

It is to be noted that before Patil Automation Judgment has been pronounced, there has been a confusion in the entire country that before filing the Commercial Suit, do filing the Mediation petition before authority is mandatory or directory. However, in 2022, when the Judgment has been passed in this case, the Hon'ble Supreme Court has following observation:-

Honorable Supreme Court of India has held that Section 12A of the Commercial Court Act, 2015 is mandatory in nature and any commercial suit instituted violating the mandate of Section 12A of the Act must be visited with rejection of the plaint **under Order VII Rule 11**. It is further held that exhausting pre-institution mediation as enumerated under Section 12A of the Commercial Court Act, 2015 by parties benefits the justice delivery system as a whole. The Court further observed that the matter with **urgent relief may evade the process of Pre- Institution (Patil Automation Pvt. Ltd. v. Rakheja Engineers Private Ltd.)**

There is no any uniform list of urgent hearing or any guidelines have been issued by the legislature or by the Apex court on which it can be decided that in which Pre- Institution will be evaded.

However, The Madras High court while adjudicating one Commercial matter namely **Mr.K Varathan v Mr. Prakash Babu Nakundhi Reddy**, thus set out certain tests/parameters (illustrative, not exhaustive) to be looked into to see if a relief was an "urgent interim relief":

- (a) whether the prayer for interim relief is a product of profound thinking carefully about the possibility of the happening;
- (b) whether the matter demands prompt action and that promptitude is of such nature that exhausting the remedy of pre institution mediation without any intervention in the mean time can lead to a irreversible situation, i.e., a situation where one cannot put the clock back;
- (c) where the urgency is of plaintiff's own doing, if that be so the plaintiff cannot take advantage of its own doing;
- (d) high standard is required to establish the requirement of this prompt action (urgency);
- (e) Plaintiff should be on fair ground in urging urgency and an interim measure;

(f) actual or apprehended wrong or injury should be so imminent that the plaintiff should be able to satisfy the court that plaintiff should not be made to stand and suffer the same.

- In recent days, one more interesting question has been circulated which states that “**Can Money Recovery Suit be treated as Commercial Suit**”. On this note the Apex court viewed that merely because the dispute is related to an immovable property wouldn't per se make it a commercial dispute under the Commercial Courts Act, 2015 unless the immovable property is 'actually used' exclusively in trade or commerce.

The Court further observed that “A dispute relating to immovable property per se may not be a commercial dispute. But it becomes a commercial dispute, if it falls under sub-clause (vii) of Section 2(1)(c) of the Act viz. “the agreements relating to immovable property used exclusively in trade or commerce”. The words “used exclusively in trade or commerce” are to be interpreted purposefully. The word “used” denotes “actually used” and it cannot be either “ready for use” or “likely to be used” or “to be used”. It should be “actually used”. Such a wide interpretation would defeat the objects of the Act and the fast-tracking procedure discussed above.” (***S.P. VELAYUTHAM & ANR. VERSUS M/S EMAAR MGF LAND LIMITED***)

SUGGESTION

The Commercial Court Act which was enacted in 2015 and later in 2018 amendment has been done, 12 A has been inserted and The Commercial Courts (Pre-institution Mediation and Settlement Rules, 2018 has been formed.

Referring the status of Commercial Court matters in Bihar, The State Government through Gazette Notification on 25.07.2019 has vested the power in Civil Judge (Senior Division) of each District has to handle the Commercial court matters, if the claim amount is Three lakhs and less than 1 crore. The following suggestion have been made in context of Bihar:-

1. One dedicated Court in Each District:-

Each district wise, There will be one Civil Judge (Senior Division) to look into the Commercial Court Matters, not all the Civil Judge (Senior Judge) will handle it. It can be on the same working style as in POCSO matter, in each district court, we have one special ADJ.

2. Time line to be followed strictly:-

The Time line has to be followed very strictly. Until and unless, there won't be disposal on time, in Commercial Court, then whole purpose of the enactment will be futile.

Judicial officials can be given more points on the disposal and timely movement of Commercial Court Matters.

When there is a high stake, indeed, duty and responsibility both are high.

3. Compliance of Act is mandatory, no deviation is allowed

Written Statement has to be filed within 30 days post thirty days, **cost to be imposed as the court deems fit**, but not beyond 120 days. Post 120 days no written statement will be taken on record. So, post 30 days a cost must be imposed.

4. Online mode of Payment of Fee before DALSA

To initiate the case before the court, foundation has been laid down from District legal service Authority (DALSA) as matter has to be filed under 12 A The Commercial Courts (Pre-institution Mediation and Settlement Rules, 2018 until and unless one doesn't have any ground of urgent relief.

As per the Rule 3, Fee can be deposited by way of demand draft or through online. But there are times, it has been observed that DD has not been encashed and it gets expired then DASLA again ask the applicant for renewal of the DD. This incur the additional cost to the applicant and also lead to delay disposal of the matter. Therefore, **Online mode of payment must be started to avoid the unnecessary delay.**

5. The Court Fees (Bihar Amendment) Act 2010 must not be followed in Commercial Matters. **For Commercial matters, a different calculation should be followed so that all stock holders must take the sense of responsibility.**
6. The Appointment of Mediators must be at the par, who has the basic understanding about the Commercial Court Act and one who understand that stake is high. Therefore, their selection should be done diligently.
7. The updation of Pre-Institution u/s 12A on e-court must be properly been done.

CONCLUSION

We are very much aware about pendencies of the matters before different Courts/ Tribunals/ Authority/ Commission. Therefore, to reduce the numbers, Mediation is one of the process on which one can rely. Therefore, in 2023, The Mediation Act has been enacted. There are lot of statues in recent days, where we can see provision of Mediation has been introduced. The sec 5 of the Mediation Act makes the Pre- Institution has mandatory Provision. The Provision read it as “**whether any mediation agreement exists or not**, the parties before filing any suit or proceedings of civil or commercial nature in any court, may voluntarily and with mutual consent take steps to settle the disputes by **pre-litigation mediation**. **Whereas As per sec 12A of the Commercial Court Act states that, A suit which doesn’t contemplates any urgent relief under this Act, shall not be instituted unless the Plaintiff exhaust the remedy of Pre-institution Mediation.** There is a little contradictory provision in both the statutes pertain to Pre-institution, but basic purpose is disposal of the matter without any delay and parties must get relief at the earliest. We must hope that all the stakeholders must have to understand their responsibilities and do their respective job properly so that we don’t have to show any sorry face.

END NOTES

1. <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081069-1.pdf>/ last visited on Nov 30,2024
2. <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081674.pdf>/ last visited on Nov 29,2024
3. https://prsindia.org/files/bills_acts/bills_parliament/2009/The_Commercial_Division_of_High_Courts_Bill_2009.pdf/ last Visited on Nov 27,2024
4. <https://www.indiacode.nic.in/bitstream/123456789/2156/1/a2016-04.pdf> / last visited on Nov 23,2024
5. <https://cdnbbsr.s3waas.gov.in/s3ec01366f0bc7bd1d4bf414073cabbadf/uploads/2023/03/2023030271.pdf> / last visited on November 10,2024
6. (2022) 10 SCC 1
7. C.S. (Comm.Div.) No. 202 of 2022
8. Special Leave Petition (Civil) Diary No. 2986 of 2024