

**ARBITRATION
AND
THE COURTS**

Dr. Justice R. R. MISRA



**Institute of
JUDICIAL TRAINING AND RESEARCH
Uttar Pradesh, Lucknow**

TEL. 641863 (Resl.)

DR. JUSTICE R. R. MISRA

210/182, OLD MUMFORDGUNJ
ALLAHABAD

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F O R E W O R D

In certain respects arbitration generally serves as an alternative forum to that of the Court. The purpose of statutes relating to arbitration is to alter the judicial atmosphere of hostility to arbitration, to discourage litigation, to provide for the enforcement of arbitration agreement and to place the stamp of finality upon arbitrations and awards thereunder. It is with this point of view and the growing importance of arbitration that the present study has been undertaken and is meant to introduce the subject of arbitration to beginners. I hope it will respond to the purpose.

Dr. R. R. Misra

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CHAPTER I

GENERAL

It is common knowledge that human beings have a tendency to live in groups. Disputes and problems are likely to arise and did arise in the society. In early times the same were met and determined by moral laws. With the growth of society the power to determine the disputes between various types of persons was placed in the hands of one, who commanded the confidence of both parties. In ancient India, Hindus recognised decisions of Panchayats consisting of wealthy, influential and elderly men of the community and entrusted them with the power of management of their religious and social functions. The Sages also came to the rescue of the society and evolved not only moral course of conduct but also machinery to solve out the day to day problems. However, the sanction behind the decisions of Panchayat was that if some body disobeyed the decision, he was excommunicated or excluded from all religious and social functions of the community or even the city.

The word 'Panchayat' literally means a body of five persons. It was considered in ancient India that whatever decision was given by a body of five persons, it was the God who gave that decision through the said persons. Therefore, they were also known as "Panch Parmeshwar". The head of such Panches was known as 'Sarpanch'. He might act even as an umpire. Be that it may be, but such determination of a dispute later on came to be called "Arbitration" and the Panchayats were referred to as "Arbitration Tribunal". Arbitrator is a person to whom a particular dispute is referred by consent of parties to sustain friendly determination of controversies. The job that he enters into is known as "Arbitration".

"Arbitration" is a term derived from the nomenclature of Roman Law. It is an arrangement in some disputed matter for taking and abiding by the judgment of a selected person instead of carrying it to the established courts of justice.

1.2 Origin :

(a) India :

As regards the origin of Arbitration, China, India and Italy claim to be the first countries to introduce the system. Since early times the decisions of Panchayats were accepted as mandate. In ancient India there were three grades of Arbitration. The first one was known as 'Kula' or 'Kinsman' that is a group of persons bound by family ties. Second one was 'Sreni' or Assemblies of Tradesmen and Artisans belonging to different tribes but connected in a way with each other by practice of the same profession and the third one was 'Puga' or a Board of persons belonging to different sects and tribes and following different professions but residing in the same locality. Of the above three tier system, the lowest was 'Kula' whose decision was subject to appeal before 'Sreni'. The decision of the Sreni in turn could be revised by 'Puga'. Against the decision of the 'Puga', an appeal was maintainable to the 'Pradvivaca' and finally to the sovereign, and prince. See "*Chanbesappa vs. Baslingyya* (ILR 51 Bom. 908 : A. I. R. 1927 Bom 565 (FB)). This mode of obtaining justice by litigants of every description in more or less modified form prevailed for many centuries in India during Hindu and Mohammaden rule. This system of having their differences settled through arbitration was evolved because of the necessity, in the absence of Courts, to have the differences of the members of the Society settled or adjusted by domestic tribunals, which they called as Panchayats, though of different grades and at various levels.

Narada states that village councils (Kula or Kulani) corporation (Sreni) and assemblies (Puga) used to decide disputes. Dr. Kane has also described the said three tribunals as Arbitration Tribunals, which had a status of Panchayat in modern India. (Refer Justice S. Varadachariar Hindu Judicial System (Radhakumud Mookerjee Endowment Lectures). P. 98). These Panchayats were not concerned by the technicalities of procedure and laws of the evidence. The foremost advantage of the system lay in their location because in rural settings it was difficult for a witness to conceal the truth before his co-villagers.

Later, in British India Panchayat system underwent considerable changes. Commencing from the year 1772, a number of regulations were made in the Presidency of Bengal. In Madras Presidency Regulation of 1816, the District Munsif was authorised to convene district Panchayats for the determination of civil suits. In Bombay, Bombay Presidency Regulation of 1827 provided for arbitration of civil disputes. All these regulations continued till 1859. Besides the three Presidency Regulations, the Act IX of 1840 was passed under the Charter Act of 1833. The said

regulations of the three Presidency towns continued to operate till 1859. Ultimately the Code of Civil Procedure of 1882 incorporated certain provisions relating to Arbitration. Besides the same, an Indian Arbitration Act of 1899 was also passed which was based on English Arbitration Act of 1889 but the application of this Act was confined to the said three Presidency towns of Calcutta, Bombay and Madras. In 1908 the Civil Procedure Code was re-enacted and the provisions relating to arbitration were set out in the Second Schedule of the Code of Civil Procedure of 1908 relating to arbitration. Thus, the Arbitration Act of 1940 amended and consolidated the law relating to arbitration in British India.

(b) United Kingdom :

In early times, arbitration law was governed by the common law. The subject matters of the disputes were mainly confined to chattel and tort. With the consequent growth of trade and the gradual expansion of the British Empire, problems with merchants and traders increased and commercial disputes were frequently referred to arbitration. The Statute of 1698 was the first legislation towards the encouragement of arbitration. Later on, the Common Law Procedure Act of 1854 and the English Arbitration Act of 1889 codified the general law relating to arbitration. Subsequently, the English Arbitration Act, 1950 which was a consolidated Act was passed and the latest codified law on the subject in England is Arbitration Act, 1979. These laws so passed in the United Kingdom form the main source of the law of arbitration in most of the Commonwealth countries and also the United States of America.

(c) United States :

Since United States at its inception was ruled by British Government, the early laws relating to arbitration, took colour from the arbitration laws of the United Kingdom and subsequently by the rules framed and the practices developed by the New York Chamber of Commerce and the New York Stock Exchange. Some of the States in the U. S. A. have passed Acts for compulsory arbitration so as to avoid delay in court proceedings in regard to certain claims, such as motor accidents and small claims. The Year Book on Commercial Arbitration in the United States contains provisions for Arbitration including forms, rules and regulations and panel of arbitrators in Trade Associations, Legal Aid Societies and Bar Associations furnish arbitration facilities in every part of the country relating to disputes in the Federal Courts. The Federal Arbitration Act has been passed in the year 1935.

In America we have United States Arbitration Act which is limited

to "maritime transaction or a contract evidencing a transaction involving commerce". They have Federal Arbitration Act also which empowers Federal Courts to compel arbitration but the contract in which the arbitration clause is found must involve commerce. A Uniform Arbitration Act based on the New York Act and similar Acts of 15 other States has met wider acceptance.

Thus in the States the settlement of controversy by arbitration is a legally favoured contractual proceeding of Common Law origin by which the parties by consent submit the matter for determination to the Tribunal of their own choosing in substitution for the Tribunal provided by the ordinary process of law.

(d) U. S. S. R. :

More or less all differences arising out of commercial contracts and specially with foreign countries are referred to arbitration. In U.S.S.R. resort is very often had to bilateral treaties. As to the Foreign Trade Arbitration Commission (F. T. A. C.) its new rules and procedures were approved by the resolution of the Presidium of the Chamber of July 1, 1975.

1.3 Need of Study :

In view of the above historical back-ground coupled with the fact that our C. P. C. does not run counter to the idea of arbitration rather it supports the same and also having regard to the vast claims and disputes of the citizens as well as of the Government which arise under civil laws and as a result of commercial activities, more so, when now the State also is enjoined to undertake various activities in a welfare State and the volume of arrears of cases keeps on mounting in the courts as well as before the Tribunals set-up by the Government, the importance of arbitration for settlement of disputes as well commercial disputes assumes very great significance.

1.4 Objects of arbitration :

The object of arbitration is the final disposal of differences between the parties in a faster, more convenient, less expensive, more expeditious, simplicity of procedure than is available in ordinary courts' proceedings.

1.5 Scope of Arbitration :

In Halsbury's Laws of England (4th Ed. Vol. 2), Para 501, 'Arbitration' has been defined in the following terms :—

"An arbitration is the reference of dispute or difference

between not less than two parties, for determination, after hearing both sides in a judicial manner, by a person or persons other than a court of competent jurisdiction."

Romily, M. R. in Collins vs. Collins (28 LJ Ch. 184 : 53 ER 916) has defined arbitration as follows :—

"An arbitration is a reference to the decision of one or more persons, either with or without an umpire, a particular matter in difference between the parties".

In Wharton's Law Lexicon (14th Ed.) 'Arbitration' has been defined as,

"The determination of a matter in dispute by the judgment of one or more persons called Arbitrators, who in case of difference usually call in an "Umpire" to decide between them. An arbitrator is a disinterested person to whose judgment and decision matters in dispute are referred."

In American Jurisprudence (2 Ed) Vol. 5, page 518, nature of Arbitration has been stated thus :

"Arbitration is a mode of settling differences through the investigation and determination, by one or more unofficial persons selected for the purpose, of some disputed matter submitted to them by the contending parties for decision and award, in lieu of judicial proceeding."

1.6 Arbitration Agreement :

If the parties to a dispute choose their own forum to settle their present or future differences through arbitration, they have to enter into a written agreement for the purpose. Sub-clause (a) of Section 2 of the Arbitration Act, 1940 (No. 10 of 1940) defines the word "arbitration agreement" as follows :—

"(a) "Arbitration Agreement" means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not."

When we dissect the above definition, we find that an "arbitration agreement" should have the following essential characteristics :—

- (i) To form a valid and binding agreement, the parties must be of sound mind, and capable of entering into a contract ;
- (ii) There should be an intention to refer the disputes to arbitration and to be bound by the decision of the arbitrator ;

- (iii) The agreement must be in respect of present or future disputes ; and
- (iv) The agreement must be in writing but signatures of the parties are not essential.

It is sufficient if the terms are reduced to writing and the agreement of the parties thereto is established (See *Banarsi Das vs. Cane Commissioner, U. P.*, A. I. R. 1963 Supreme Court 1417). A formal agreement executed and signed by both the parties is not necessary (*Union of India vs. Rallia Ram*, A. I. R. 1963 S. C. 1685 and *Banarsi Das vs. Cane Commissioner*, A. I. R. 1963 S. C. 1417).

No particular form or words are necessary for reducing the terms of arbitration agreement. What is required to be sustained is the agreement of the parties to the effect that if dispute arises between them in respect of the subject matter of contract, such disputes shall be referred to arbitration. The agreement may be signed by both the parties or signed by one party and even orally accepted by the other party or an unsigned agreement containing the terms of the submission of arbitration agreed to orally by both the parties (*Jugal Kishore vs. Mrs. Gulbhai*, A.I.R. 1955 SC 812). A specimen of agreement clause in a contract relating to present disputes as well for future differences to be referred to arbitration is to be found annexed as Appendix 2 and 3.

In *Fertilizer Corpn. vs. Domestic Engineering Installation* A. I. R. 1970 All 31) the tender, the acceptance of the tender and the work order issued by Food Corporation contained all the terms of the contract, and the parties treated themselves bound by the agreement from the work-order. Held : The arbitration clause contained in these documents was binding on the parties, even though the formal agreement was executed subsequently.

Where the contract between the parties was evidenced by bought and sold notes only, then those notes should be considered for ascertaining whether there is an arbitration agreement between them for settlement of disputes between the parties (*Fort Gloster Industries vs. Sethia Mercantile (P) Ltd.*, A. I. R. 1971 Supreme Court 2289).

The consideration in an arbitration agreement is the willingness of either side to abide by the decision or award of the Arbitrator even though it may be against him. There are, in fact, reciprocal promises proceeding from either side. Both the parties must mutually be bound to refer a dispute to a particular tribunal and abide by its decision.

Who can enter into arbitration agreement :

Parties competent to contract may enter into agreements. *Minors and persons of unsound mind may agree to refer through their guardians.* A Manager of a Firm or a Manager/Karta of a Joint Hindu family can also enter into agreement to refer dispute to Arbitration.

Separability of Arbitration provision :

It is universally accepted principle that agreements for arbitration contained in a contract are treated as separable parts of the contract, so that the illegality of another part of the contract does not nullify such agreement and a breach or reodiation of the contract does not preclude the right to arbitrate.

Construction of provisions relating to Arbitration :

Statutory provisions relating to Arbitration as contained in Arbitration Act are generally held valid and liberally construed.

Validity of arbitration agreement :

Since the very purpose of arbitration is to encourage parties to devise their own terms and procedure for settlement of disputes, no term of an arbitration agreement will be held to be invalid unless it is against public policy as contemplated under Section 23 of the Contract Act.

Rules of interpretation of Arbitration Agreement :

An arbitration agreement is in general subject to the same rules of interpretation and construction as other contracts (*Corpus Juris Secundum*, Vol. 6, Page 192).

Interpretation of a Reference :

A reference to arbitration should be read not in any pedantic spirit but so as to interpret broadly the intention of the parties (*Thirumalia Chettiar vs. Narjaya Gonder*, A. I. R. 1941 Mad. 266).

Conflict of laws :

Where the agreement between the parties contains a foreign element, the essential validity of the agreement, its interpretation and the rights and obligations of the parties under it are governed (with certain exceptions) by the proper law : that is, the system of law which the parties have agreed or intended should apply. (*Halsburys Laws of England IV Vol. 2, Para 546*).

Arbitration Argeement and its breach :

An agreement to refer disputes to arbitration, where written or oral, is a binding contract at common law and breach of it gives a right to an action for damages. (Halsburys Laws of England, 4th Ed. Vol. 2, Para 542).

Time barred argeements :

A dispute or a difference does not cease to be subsisting because it is barred by time, although such an application, if filed in court, is liable to be dismissed. Similarly a person may agree to pay time barred debt and to submit arbitration in that regard.

Criminal proceedings :

No Arbitration agreement can be entered in regard to criminal proceeding which are not compoundable for the simple reason that the Arbitrators cannot arrogate to themselves the powers of the Magistrates and ultimately arrive at an award purporting to decide whether an offence has been committed or not. Therefore, such matters of criminal nature which cannot be compromised, cannot be referred to an Arbitration, but compoundable cases may be referred to Arbitration. Even disputes under Section 145 of the Cr. P. C. which relate to possession and fortake of the nature of civil dispute, may be referred to Arbitration. In cases where the injured party has a remedy by civil action, as well as by criminal prosecution, a reference to Arbitration can be made.

Specific disputes :

Specific disputes need not find place in the Arbitration agreement. Such specification can be made in the proceeding before the Arbitrator to which reference of all disputes without specifying the dispute is permissible.

Question of law :

A pure question of law may be referred to an Arbitrator. In case such a reference is made the award will not be set-aside merely on the ground that the decision of the Arbitrator is wrong. (*Absalam Ltd. vs. Great Western (London) Garden Village Society*, (1933) AC 592, 607).

Rules of Contract :

This arises in two ways, Firstly, where the agreement as such amounts to an Arbitration agreement and Secondly, where particular dispute

is or is not covered by Arbitration agreement. As regards the Rules of Contract or Interpretation of an Arbitration agreement, the same Rules apply as to agreements generally but the dominant factor to be taken into account is the 'intention of the parties' as evidenced by the agreement itself. Such an intention must be gathered from the whole content.

Agreement with Government Departments :

Occasions arise where one of the parties entering into an arbitration agreement is the Government. Specimen of such arbitration Clauses in contracts relating to Public Works Department or with the Electricity Department are annexed as Appendix 7 and 8. However, the recognised rules of construction according to which such agreements are interpreted do not draw any distinction between contracts to which Government is one of the parties and contracts between two private parties.

CHAPTER II

2.1 Species of Arbitration :

This is mainly of two types :—

(a) *Arbitration by agreement of parties :*

This takes in its ambit not only disputes between private parties but also commercial arbitration, industrial arbitration and even international arbitration. In so far as the first two are concerned, this is dealt with by Arbitration Act under three broad heads :

(1) Arbitration without intervention of the Court :

(2) *Arbitration with intervention of the Court when there is no suit pending :* In this case application for filing the agreement of arbitration and thereafter prayer for making the reference to arbitration is made.

(c) *Arbitration in suits :*

Although there is no law giving a Judge the power to refer a pending case before the court to arbitration unless all the parties to the suit agree to the said reference and make a written application for the purpose, yet it is always open to the parties to agree to refer the dispute in the suit for arbitration.

These heads will be discussed at appropriate places in the Chapters to follow.

(b) *Compulsory Arbitration :*

At times we find that besides the laws relating to arbitration by agreement of parties, there are Statutes which make arbitration compulsory. These Statutes relate to the statutory arbitration. This type of arbitration is one when there is no voluntary agreement or contract between the parties but they have to make a reference to Arbitration under the provisions of some Act. The general purposes of such statutory enactment is also to afford a more efficacious arbitration procedure for the purpose.

At this stage it is useful to refer little elaborately about as to what is the position with regard to compulsory arbitration in U. S. A., U. K. and India.

(a) Compulsory Arbitration Statutes in U. S. A. :

Although the method of setting dispute by arbitration is of common origin, yet in many jurisdictions special statutes relating to arbitration have been enacted. For the purpose, the various States fall into three principal divisions in the matter of the law of arbitration. These divisions have been stated as follows :

(1) Those States in which the common law is decisive, and in which statutes are merely implemental to or amendatory of the common law ;

(2) Those States that have adopted arbitration statutes patterned after the New York Arbitration Act and have so changed the common law that the courts have declared some of the rights created by the statutes substantive rather than procedural, but that have not by the adoption of such statutes abolished common law arbitration ; and

(3) Those States whose statutes follow the statutes of the States in the second group, but where the courts have ruled that the system of arbitration adopted by the legislature is comprehensive and hence excludes common law arbitration (See : American Jurisprudence Second Ed. Vol. 5, Page 522).

After the above statewide division of statutes relating to compulsory arbitration, let us measure the statewide classification of such statutes. For the purpose a distinction may be drawn between :

(i) directly coercive statutes, the effect of which is to close the courts to litigants by compelling resort to arbitration for final determination of rights.

(ii) statutes designed merely to aid the Courts by providing for arbitration in certain cases but reserving a right of appeal to the Courts. Statutes of the later class have generally been held valid. Also statutory provisions for compulsory arbitration in connection with court proceedings to determine just compensation for property taken for public use fall into a different category, for they are in aid of the exercise of the State's power of Eminent Domain (See American Jurisprudence, 2nd Editton, Vol. 5, Page 526).

There is good reason to distinguish enactments that require consent to arbitration of differences as a part of the contractual obligation of those

securing public contracts or franchises, statutes such as some Workmen's Compensation Acts that provide for arbitration of disputes between those who elect to come under their provisions, and those statutes providing for the determination by appraisers or arbitrators, so-called of losses under certain forms of insurance policies. In such cases it is the voluntary agreement of the parties within the limits set by statute that brings the compulsory provision for arbitration into effect, and the rules applicable to similar voluntary contracts between such parties may be applied.

Validity of Compulsory Arbitration in America :

As regards the validity of statutes, we find that the following extract elucidates the position :

"A statute which provides for compulsory arbitration, and makes the decision of the arbitrators as such final and conclusive has been considered invalid, but if a statute for compulsory arbitration gives to the parties the further right by appeal from the decision of the arbitrators, or other procedure, to carry the case before a regular judicial tribunal and have the issues there tried, or the award sufficiently reviewed, it is not invalid." (Corpus Juris secundum Vol. 6, Page 170).

(b) United Kingdom :

Arbitration Compulsory or optional by statute :

Examples of statutes making arbitration compulsory may be found in a host of Acts and in particular in connection with the following matters: agricultural holdings (The Agricultural Holdings Act 1948), allotments (The Allotments Act, 1922), coast protection (The Coast Protection Act, 1949), Compulsory purchase of land (The Lands Clauses Consolidation Act), electricity supply (the Electric Lighting Act 1882), freshwater fisheries (the Salmon and Freshwater Fisheries Act, 1923), Food and Drugs (the Food and Drugs Act, 1955), highways (the Highways Act, 1959), housing the Small Dwellings Acquisition Act, 1899), mines (the Coal Act, 1938), nature reserves (the National Parks and Access to the Country side Act, 1949), pipelines (the Pipelines Act, 1962), public health and the London Building Acts (the Public Health Act, 1875), public utilities street works (the Public Utilities Street Works Act, 1950), purchase tax (the Purchase Tax Act, 1963), railways (The Railway Clauses Consolidation Act, 1845), road traffic (the Road Traffic Act, 1960), royal forces (The Military Lands Act, 1892), saving banks (the National Savings Bank Act, 1971) and water supply) the Metropolis Water Act, 1902).

Examples of provisions for arbitration at the option of the parties or one of them are those relating to certain disputes in connection with the

following matters : agricultural holdings (the Agricultural Holdings Act, 1948), building societies (the Building Societies Act, 1962), companies (the Companies Clauses Consolidation Act, 1945), compulsory purchase of land (the Requisitioned Land and War Works Act, 1945), copyright (the Copyright Act, 1956), friendly societies (the Friendly Societies Act, 1896), gas supply (the Gas Act, 1972), highways (the Highway Act, 1959), housing (the Housing Act, 1957), industrial and provident societies (the Industrial and Provident Societies Act, 1965), labour and trade Unions (the Industrial Relations Act, 1971), national health (the National Health Service (amendment) Act, 1939), plant health (the Plant Health Act, 1967), post office (the Post Office Works Act, 1956), public health and the London Buildings Acts (the London Building Acts (Amendment) Act, 1939), rating (the General Rate Act, 1967), road traffic (the Carriage of Goods by Road Act, 1965), and water supply (the Metropolis Water Act, 1971).

Neither of the above lists is exhaustive, indeed, provisions for statutory arbitrations are so numerous, and so rapidly increasing, that an exhaustive list is no longer either practicable or desirable.

(c) *India :*

In India Section 46 of the Arbitration Act 1940 provides for statutory arbitrations. For all such cases the enactment under the provisions of which the reference is made, will be deemed to be the arbitration agreement and the arbitration proceedings will be conducted as in the case of any other arbitration agreement. This is subject to two exceptions. These proceedings will not apply to :—

- (i) (a) discharge of arbitration agreement by the death of party,
- (b) provisions in case of insolvency,
- (c) power of court where arbitrator is removed or his authority is revoked,
- (d) contingency contemplated by Section 36 of the Act,
- (e) provisions of limitation under Section 37 of the Act.

(ii) If there is anything in the Arbitration Act which is inconsistent with the enactment under which arbitration is taking place or the Rules framed under the enactment, the provisions of that enactment and the rules shall prevail.

Section 46 of the Act deals with only those statutory arbitrations in which the statute itself is to be looked up as an arbitration agreement. However, a decision under the Electricity Act on a dispute between a

licence and the State Electricity Board regarding the price of the electricity supplied is an award and is subject to the provisions of the Arbitration Act. In India the following are some of the enactments which contains provision for arbitration :

CENTRAL ACTS

- | | |
|---|-----------------------------|
| 1. Cantonments Act, 11 of 1924 | Section 260 to 265. |
| 2. Electricity Act, IX of 1910 | Section 52. |
| 3. Land Acquisition Act, 1 of 1984 | Sections 11, 12, 18 and 26. |
| 4. Presidency Towns Insolvency Act, III of 1909 | Section 68(h) |
| 5. Industrial Disputes Act 1947 | Section 10-A. |
| 6. Religious Endowments Act of 1863 | Section 16 and 17. |
| 7. Telegraph Act, 1885 | Section 7-8. |
| 8. Trusts Act, 11 of 1812 | Section 43(c). |

STATE ACTS

ASSAM

- | | |
|--|--------------|
| 9. Assam Land Revenue Regulation, 1, of 1886 | Section 143. |
|--|--------------|

BOMBAY

- | | |
|--|--------------------|
| 10. Bombay Land Revenue Code v. of 1897 | Section 120. |
| 11. Bombay District Municipal Act, III of 1901 | Section 160. |
| 12. Bombay Co-operative Societies Act, VII of 1925 | Sections 54 to 56. |

2.2 Distinction between an Arbitration and Conciliation :

While an arbitration is the reference of disputes or difference between not less than two parties for determination by a third person, who after hearing both the sides in a judicial manner arrives at a decision of the disputed matters but conciliation is a process of persuading the parties to reach an agreement but is plainly not arbitration nor is the chairman of the conciliation board an arbitrator.

2.3 Distinction between a Commercial arbitration and Industrial arbitration :

The kernel of the distinction between commercial and industrial arbitration is that commercial arbitration is an aspect of the administration of justice and more particularly, a substitute for the judicial process while industrial arbitration or arbitration of labour disputes is more often an extension of the process of collective bargaining.

Commercial arbitration generally concerns itself with the interpretation of existing obligations and disputes relating to existing agreements while industrial arbitration may involve the extension of an existing agreement, or the making of a new one, or in general, the creation of new obligations or modifications of old ones.

Commercial arbitration is intended to implement the interest of justice but for the adjustment of the labour controversies industrial arbitration is limited to the settlement of the existing disputes and also in furtherance of public policy designed to keep the peace between the employer and the employees. In India Industrial arbitration is normally evidenced by labour laws.

Industrial disputes are settled by words of conciliation and mediation rather than by evidence but in commercial arbitration elements of equitable arbitration are normally present.

Commercial or Mercantile Arbitration :

Under the bye-laws of Trade Associations or Chambers of Commerce the diversity of commercial activities has resulted in the growth of a system of commercial arbitration which does not make use of the ordinary legal procedure, but none-theless it is governed by the law of land. Such commercial arbitration has been evolved to deal with disputes which arise within particular trades.

As far as the disputes arising either among the members inter se or even in respect of disputes between outsiders and members of the Association or Chambers, the bye laws of such Trade Association or Chamber generally contain provisions for Arbitration. Such bye-laws amount to implied agreement for Arbitration and are enforceable by or against the members.

Normally the experts are appointed as arbitrators in such disputes because of their skill, experience and knowledge of the trade. Foreign chamber of Commerce have, therefore, evolved and adopted rules to settle disputes by arbitration. In India we have got rules of Bengal Chamber of Commerce, Bombay Chamber of Commerce and Industry, the Madras Chamber of Commerce, Tribunal of Arbitration Rules, Rules of Arbitration of the Indian Council of Arbitration. By way of example you will find on

the Appendix a copy of Rules of the Bombay Chamber of Commerce, as Appendix '4'. Besides the said Rules, framed by the various Chambers of Commerce in India there are in existence Rules of arbitration of the Indian Council of Arbitration in force from 1st April 1970 (a copy of the same is annexed as Appendix '5'. That apart, there are Rules relating to Foreign Commercial Arbitration to mention some of them are, Rules of Procedure of the Inter-American Commercial Arbitration Commission, Arbitration Rules of the Foreign Trade Arbitration Commission of the U. S. S. R. Chamber of Commerce and Rules of Procedure Commercial Arbitration Rules of the American Arbitration Association, Rules of the London Court of Arbitration.

International Arbitration :

International Arbitration is a proceeding in which two nations refer their disputes to one or more selected persons, and the dispute is decided in terms of the arbitration agreement or the law by which the nations have agreed to be bound.

The modern trend is to place increasing reliance on commercial arbitration to solve the disputes.

The origin of international commercial arbitration dates back to the 19th Century, through the influence of the Abbe De St. Pierre and Jerome Bentham. The Hague Peace Conference of 1899 was summoned to set up a "Permanent Court of Arbitration". However, there was no authority or power which could compel the parties to submit their disputes to arbitration. The arbitrations at the Hague Court did considerable good. Later on the Geneva Protocol on Arbitration Clauses of 1923 and the General Convention on the Execution of Foreign Arbitral Awards of 1927 were concluded under the auspices of the League of Nations. The Geneva Convention was a step consequent upon the Geneva Protocol and the contracting parties agreed to recognise as binding awards made in the territory of another contracting State and undertook to enforce it ultimately the Arbitration (Protocol and Convention) Act, 1937 implemented the Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the execution of Foreign Arbitral Awards of 1927. Thereafter, the major international convention on commercial arbitration was adopted in 1958 at New York. Known as the New York Convention of 1958 which operates without derogating from the validity of other bilateral as well as multi-lateral agreements on the subject of the recognition and enforcement of foreign arbitral awards.

The subject-matter of international arbitration may be divided into three categories :

(1) Those which arise between the States in their sovereign capacities, It includes territorial difference with regard to ownership and rights of fishing at sea etc. ;

(2) These in which one State makes a demand upon another State ostensibly in its sovereign capacity. but, infact, on behalf of some individual or a body of individuals whose interests are intermingled with the State. It includes certain pecuniary claim in respect of acts wrongfully done to one or more subjects by or with the authority of another State and ;

(3) Those in which persons of two different States are involved in a contract with arbitration clause having foreign elements. It includes contractual obligations between subjects of two States.

Law applicable to International arbitration :

International arbitration arising out of an international contract will be governed by the proper law of contract, i.e. the law which the most real and the closest connection with the contract or rather the cause of action arising out of the contract. Once the court which would have jurisdiction over the arbitration is determined, then the procedural law applicable to the arbitration proceeding shall apply.

CHAPTER III

3.1 Jurisdiction of Civil Courts

Jurisdiction in its classical concept means power to hear and determine a cause. Although numerous attempts have been made to define what "Jurisdiction" really means yet all the views centre round, the central meaning that is a judicial power to hear and determine a cause.

3.2 Principles of Jurisdiction :

Section 4 of the Civil Procedure Code 1908 provides that if any provision in the Civil Procedure Code is contrary to affect any special or local law, then the special or local law shall prevail but if the special or local law is silent the provisions of Civil Procedure Code will prevail.

Section 9 of the Code of Civil Procedure however, contains plenary powers to the effect that the courts shall have jurisdiction to try all suits of civil nature, i.e a suit in which the right to property or to an office is contested. But there is an explanation to the said clause which is to the effect that the suits of which the cognizance is expressly or impliedly barred, the courts are having no jurisdiction to try such suits.

3.3 Suits Implied by Barred :

Obviously a suit is expressly barred if a legislation in express terms says so but it is impliedly barred if a statute creates a new offence or new rights and prescribes a special remedy. In that event no other remedy can be resorted to. In the case of "*Raja Ram Kumar vs. Union of India*" (A. I. R. 1988 Supreme Court 752) has laid down the principle in this regard by observing as follows :

"Generally speaking, the broad guiding considerations for determining whether civil court jurisdiction is excluded are that wherever a right, not pre-existing in common law, is created by a statute and that statute itself provided a machinery for the enforcement of the right, both the right and the remedy having been created and a finality is intended to be the result of the statutory proceedings, then

even if the absence of an exclusionary provision the Civil Court's Jurisdiction is impliedly barred."

3.4 Bar of suits (Sec. 32) :

In so far as the Arbitration Act, 1940 is concerned there is an absolute bar on suits on any grounds whatsoever for a decision upon the existence, effect or validity of an arbitration agreement or award nor an agreement or award can be set aside, amended, modified, or in any way affected otherwise than as provided in this Act. This absolute bar which is limited in nature in regard to these matters has been provided for under Section 32 of the Arbitration Act notwithstanding any law for the time being in force. At the same time it may be noticed that if a suit is brought to challenge the validity of a contract containing the arbitration agreement such a suit is not barred. (See *Orient Transport Co. vs. Jaya Bharti Credit*, A. I. R., 1987 Supreme Court 2289). The bar, therefore, contemplated by Section 32 of the Arbitration Act relates only to that clause of the contract which has reference to an arbitration agreement but if the validity of the contract itself is challenged a suit lies in the courts. This is for the reason that under Section 9 of the C. P. C. every person has right to bring a suit of civil nature and, therefore, a suit can be brought in the court challenging the validity of the contract itself, although it may contain an arbitration clause.

Once the dispute is found to be within the scope of the arbitration clause, it is no part of the province of the Court to enter into the merits of the dispute. (*Mair vs. Gordhan Das*, A. I. R. 1951 Supreme Court. 9)

Besides the above position which relates arbitration clause, Section 32 of the Act also bars a suit to enforce an Award (*Ram Sahai vs. Babulal*, A. I. R. 1965, All. 217).

Thus, the only remedy for an aggrieved party in the situation indicated above, is to make an application under the Act and not by a suit. Later part of the Section 32 of the Act also enjoins on the Court not to travel outside the statutory provisions while granting relief in connection with the dispute arising out of arbitration agreement or award.

The object of bar contemplated by the legislation is to prevent abuse of the process of law and to avoid delay and expense in the enforcement of arbitration agreement or award and avoiding baseless suits challenging their existence and validity (*Jawahar Lal Barman vs. Union of India*, A. I. R. 1962, Supreme Court 378).

Various provisions of the Arbitration Act lay down that remedy provided for a party in Civil Court is not by way of suit but by way of applica-

tions. Under the Arbitration Act various provisions of the Act including Section 33, contemplate the contest by parties before the Court by means of applications and not by way of suit.

3.5 Nature of Jurisdiction of Courts in Arbitration :

No doubt the legislature has the power to extend the right of arbitration and it may regulate or limit the exercise of arbitration procedures but arbitration statutes are not ousting courts of jurisdiction but merely providing for an additional remedy of which the party may of his own free choice avail himself. The Courts work in aid of arbitration if such a forum has been selected by the parties. The jurisdiction of the court is neither overlapping nor is abrogative of the arbitral procedure. Statutory provisions relating to arbitration are also not violative of constitutional provisions guaranteeing that the courts shall be open to every person for redress of injury. (See Corpus Juris Secundum Vol. 6 Page 165).

Section 33 of the Arbitration Act contemplates three kinds of applications :

(1) The application challenging the existence of an Arbitration agreement or Award, (A specimen form of such an application is filed as Appendix 31).

(2) The application challenging the validity of the Arbitration agreement (not the contract containing the arbitration agreement) or award, and

(3) The application to have the effect of the Arbitration or agreement determined. (*R. N. Ganekar and Co. vs. Hindustan Wires Ltd.* 1974 Supreme Court, 303).

The above three situations for contest by applications are only those for which there is an express bar of a suit under Section 32 of the Act.

3.6 Jurisdiction of the Court for applications under the Arbitration Act :

Section 31 of the Arbitration Act defines the jurisdiction and pinpoint the court where all applications under the Arbitration Act will lie, and where the award is to be filed. Section 2(c) of the Arbitration Act defines the word 'Court' to mean civil court having jurisdiction to decide the question forming the subject matter of the reference if the same had been the subject matter of a suit.

In *Kumbha Mawji vs. Union of India* (A. I. R. 1953 S. C. 313) the Hon'ble Supreme Court has explained the scope of Section 31 of the Act. After examination of various sub-sections of the said section, it has been held that the section intends to vest the jurisdiction of the court in which an award is filed to be effective in three different ways :

(1) By vesting in one court the authority to deal with all questions regarding the validity, effect or existence of an award or an arbitration agreement,

(2) by casting on the persons concerned the obligation to file all applications regarding the conduct of arbitration proceedings or otherwise arising out of such proceedings in one court, and

(3) by vesting exclusive jurisdiction in the court in which the first application relating to the matter is filed.

The main object of the section as well as Sections 32 and 33 of the Act is to entrust the decision of the relevant disputes to the specified court and bar, the remedy under Section 32 by a regular suit. (See also *Jawahar Lal Barman vs. Union of India*, A. I. R. 1962 Supreme Court 378).

The expression 'Court' in sub-section (2) of Section 31 of the Act will include the court to which the proceedings might have been transferred after the award was filed either under Section 24 of the Code of Civil Procedure or under Section 13 of the Bengal, Agra and Assam Civil Courts Act, 1887) (See *Nand Kishore vs. Mul Chandra*, A.I.R. 1966All. 613.

3.7 Agreement between parties regarding Jurisdiction :

Point to be noticed in arbitration cases is that once a party select such specified court having jurisdiction, all applications shall be made to that very court and to no other court that is to say such a court will get exclusive jurisdiction, by the statute to try and determine the matters brought before it. Normally the court shall decide the controversy raised in the applications on the affidavits, filed by the parties but at the same time if the court thinks it just and expedient it can proceed to decide the applications on other evidence also.

At the same time parties cannot agree that the existence or validity of an arbitration agreement will be finally decided by the arbitrator and not by the court as it would be an agreement against public policy because Sections 31 and 33 state that verdict of the court on these questions shall be final and in regard to the same parties cannot contract out.

3.8 Specification of Court :

The conjoint effect of Sections 31 to 33 is to entrust the decision

of the relevant disputes raised in the applications to the specified Court for decision that its remedy by way of regular suit in regard to the same disputes, is barred under Section 32 of the Act. The intention of clothing a single Court with effective and exclusive jurisdiction is to avoid the conflict of jurisdiction.

Therefore on a reading of the provisions of Sections 31 and 40 of the Act, the following propositions emerge regarding the court which would have jurisdiction to entertain an application for filing an award :

(1) An award cannot be filed in a Small Causes Court as has been laid down under Section 40 of the Act.

(2) An award relating to tenancy rights or other matters with respect of which a Revenue Court would have jurisdiction to entertain a suit, no proceeding can be taken in a civil court. Such disputes are to be dealt with by the Revenue Court only.

(3) An award is to be filed in a Court within whose territorial jurisdiction the property in dispute or any portion of it is situated or cause of action has arisen.

(4) The reliefs granted by the Award must be within the pecuniary jurisdiction of the court in which the award is filed.

3.9 Applicability of provisions of code of Civil Procedure to proceeding under the Arbitration Act :

In regard to the proceeding taken before the Court under the Arbitration Act, in so far as the procedure is concerned the provisions of the Code of Civil Procedure shall apply to all proceeding before the Court and to all appeals under the Arbitration Act. Further for the application of an applicant in relation to the Arbitration proceedings the powers, vested in the Court in respect of any of the matters, set out below (as stated in the 2nd Schedule of the Act) are the same as in any proceeding before the court i.e.

(1) The preservation, interim custody or sale of any goods, which are the subject-matter of the reference,

(2) Securing the amount in difference in the reference.

(3) The detention, preservation or inspection of any property or thing which is the subject of the reference or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon or into any land or building in the possession of any to the reference, or authorising any samples to be

taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence.

- (4) Interim injunctions or the appointment of a receiver.
- (5) The appointment of a guardian for a minor or person of unsound mind for the purposes of arbitration proceedings.

ARBITRATION AND THE AWARD

§ 1 Appointment of Arbitrator

The arbitrator is appointed by the parties to the contract in writing or by the court in writing. If the parties do not agree on the arbitrator, the court may appoint one or more arbitrators. The court may also appoint a receiver or a guardian for a minor or person of unsound mind for the purposes of arbitration proceedings. The court may also make any order that it thinks fit for the purpose of giving effect to the provisions of this Act. The court may also make any order that it thinks fit for the purpose of giving effect to the provisions of this Act. The court may also make any order that it thinks fit for the purpose of giving effect to the provisions of this Act.

When an arbitration agreement is made, the arbitrator is appointed by the parties to the contract in writing or by the court in writing. If the parties do not agree on the arbitrator, the court may appoint one or more arbitrators. The court may also appoint a receiver or a guardian for a minor or person of unsound mind for the purposes of arbitration proceedings. The court may also make any order that it thinks fit for the purpose of giving effect to the provisions of this Act.

§ 2 Inevitable Authority of an Arbitrator

The arbitrator has the authority to make any order that he thinks fit for the purpose of giving effect to the provisions of this Act. The court may also make any order that it thinks fit for the purpose of giving effect to the provisions of this Act.

§ 3 Immunity of an Arbitrator

The arbitrator is immune from any legal proceedings in respect of any act or omission done by him in the exercise of his functions as an arbitrator. The court may also make any order that it thinks fit for the purpose of giving effect to the provisions of this Act.

§ 4 Jurisdiction of an Arbitrator

The arbitrator has jurisdiction to make any order that he thinks fit for the purpose of giving effect to the provisions of this Act. The court may also make any order that it thinks fit for the purpose of giving effect to the provisions of this Act.

CHAPTER IV

ARBITRATION AND THE AWARD

4.1 Appointment of Arbitration :

The rule is that the arbitrator is to be appointed by the consent of the parties. He is either nominated in the arbitration agreement itself or later when difference or dispute arises. If the parties cannot agree or an appointed arbitrator refuses to act, any party may serve the other party with a written notice to concur in the appointment of a named arbitrator under Section 8 (1). If the other party does not concur in the appointment within 15 days after the receipt of the notice, the court may on the application of the other party who gave the notice and after hearing all the parties appoint the arbitrator under Section 8 (2). A copy of such an application to be moved to the court for appointment of an arbitrator is being filed as Appendix 9.

Where an arbitration agreement provides that reference shall be to two arbitrators, one to be appointed by each party, then unless a different intention is expressed in the agreement.

4.2 Irrevocable Authority of an Arbitrator :

Unless a contrary intention is expressly agreed upon, the authority of an arbitrator or umpire is irrevocable except as provided in the Statute.

4.3 Immunity of an Arbitrator :

In view of the two decisions of the House of Lords, in England an arbitrator is immune from being sued in damages for negligence. In India also the arbitrator is statutorily protected from such liability by Section 1 of the Judicial Officers Protection Act 1850.

4.4 Jurisdiction of an Arbitrator :

Normally the scope or construction of arbitration agreement will be gone into by the arbitrator initially and not by the court (*Renusagar Power Co. vs. General Electric Company* 1884 (4) Supreme Court Cases 679). In taking the said view the Supreme Court has taken note of the observations

of Lords Wright and Porter in *Heyman vs. Darwins Limited* 1942, AC 356 that "an arbitration agreement" may confer jurisdiction on the arbitrator even to decide on the validity of an arbitration agreement. Indeed, such powers are given to the arbitrator by the rules of certain international Chamber of Commerce. This is a welcome trend to increase the ambit of the jurisdiction of the arbitrator and to reduce the control of the courts on arbitration proceedings. But if the whole of the contract is invalid including the clause relating to arbitration and the arbitration clause is inseparable, in such a situation, in view of Section 33 of the Arbitration Act, 1940 remedy lies before the Court and not before the Arbitrator. (See *Khardah Co. v. Raymon & Co.*, A. I. R. 1962 Supreme Court 1810).

4.5 Powers of Arbitrators :

Arbitrators have implied duty to act according to law—

(a) *Substantive powers* : Same powers as of court including award of interest. See Section 13 also.

(b) *Procedural powers* : Principles of code of civil procedure and natural justice are to be followed.

4.6 Retirement and Removal of Arbitrator :

In India the arbitrator has the right to resign or retire. If he refuses to act or neglects to act or is incapable of acting or dies, the party who appointed him may appoint a new arbitrator in his place (Section 9). Similarly, the court may, on the application of any party to a reference remove an arbitrator or umpire who fails to use all reasonable despatch in entering on and proceeding with the reference and making an award. The court may also remove an arbitrator or umpire who has misconducted himself or the proceedings. Copies of such applications to be moved under Sections 11 and 12 of the Act are being filed as Appendix 17 to 19. After such removal the court may appoint a new arbitrator or an umpire. Such appointment may also be made by the court after the court has granted leave to a party to revoke the authority of an arbitrator or the umpire (Sections 11 and 12).

4.7 Award to be signed :

After the evidence of the parties has been closed the arbitrator or the arbitrators or umpire are required to reduce their conclusion in the shape of an award which they are obliged to sign and give notice in writing to the parties of the making and signing of the award. This notice will also indicate the amount of fees and charges payable in respect of the arbitration and award.

To complete the award it is not necessary that it should be signed by the parties. If the arbitrator has signed the award under the law it is validly pronounced and made. The word 'made' means that the mind of the arbitrator has been declared and filing of it is only a ministerial act. Once an award is signed, the arbitrator becomes functus officio unless there is something to the contrary in the arbitration agreement itself.

Date of Award :

It will be the date on which the award is published. (*Gujrat Water Supply and Sewerage Board vs. Unique Erections (Gujrat) (P.) Ltd.* (1989) (I) Supreme Court 285.

Filing of Award :

After the award has been signed a party to the arbitration to the agreement made or if so directed by the court and upon payment of the fees and charges due in respect of the arbitration and the award as well as the costs and charges of filing the award, that is after all these steps are taken, the arbitrator is duty bound to cause the award or a signed copy thereof together with any deposition and documents which may have been taken and proved before them, to be filed in court. Thereupon, the court shall give notice to the parties of the filing of the award. In case the arbitrator has stated a special case on any question of law involved, the court shall after giving opportunity to the parties pronounce its opinion and such opinion shall also form part of the award.

After an award has been filed in the court, it cannot be remitted to the arbitrator for resubmission in case it was deficiently stamped. It may, however, be borne in mind that an award which was neither registered nor was filed in court is still binding on the parties. It is also open to an arbitrator to make an interim award under Section 27 of the Arbitration Act but at the same time an arbitrator is bound to pass an award which is final.

4.8 Construction, Operation and effect of Award, Principles of Construction of Award :

An arbitration award is a decision of an extra-judicial tribunal which the parties themselves have created, and by whose judgment they have mutually agreed to abide.

Following the general rule of favourable construction which is now applied to arbitration proceedings, it is usually held that arbitration awards will be construed liberally, rather than technically, and every reasonable intendment will be made in their favour or support. Hence, if an award

is susceptible of two interpretations, one of which will render it valid, and the other, invalid, the former will be adopted. The award must be construed as a whole, so as to give effect to every word and sentence, and so that one part may stand agreeable with the other and all parts stand together. It should not be construed so that anything would be vain and superfluous. (See *Corpus Juris Secundum* Vol. 6 Page 366).

Where the award is ambiguous it is for the arbitrator and not the courts to resolve any doubts as to its meaning or extent, and if the award is not ambiguous, the court may not go behind the plain language thereof in search for reasons for the award. (*Corpus Juris Secundum* Vol. 6 Page 306).

Operation and effect of award :

A valid award, regularly and properly made, ordinarily has the same operation and effect as against the parties and their privies as the judgment of a court of last resort.

Res Judicata and Estoppel :

The doctrines of *res judicata* and *estoppel* are applicable to an arbitration award in the same manner as they apply to the judgment of a court. (*Corpus Juris Secundum* Vol. 6 Page 375).

Torts and Nuisances :

There is no doubt that disputes arising in tort may be submitted to arbitration and in case of private nuisance, the owner of land may submit the question of future as well as past damages, and will be bound by the award.

Fees and charges of arbitration :

In mercantile and business arbitrations either relevant rules of the Chamber of Commerce which is referred to in the arbitration agreement provide the scale of fees and charges and in absence thereof there is a implied contract to pay the arbitrator reasonable remuneration for his services. (*Crompton & Holt vs. Ridley & Co.* (1887) 20 QBD 48). It is also open to an arbitrator to demand his fees before entering on the reference and in case he makes such of demand, the same is not illegal (See *Teja Singh vs. Union of India*, A.I.R. 1955 All. 666). All disputes relating to remuneration or costs of an Arbitrator are to be decided by the court under Section 38 of the Act. A specimen form of such an application is being annexed as Appendix 33.

4.10 Lien on Award

An arbitration or umpire has a lien on the arbitration agreement and award for the amount of his charges.

4.11 Limitation for making application for filing an award on setting aside a Revision of Award :

Under Article 119 of the Limitation Act, 1963, thirty days from the date of service of the notice of the making of the award is the period for filing the award in the court. Similarly, for making an application either for setting aside an award or getting an award remitted for reconsideration limitation prescribed is thirty days from the date of service of notice of the filing of the award. Delay in filing either of the said applications is liable to be condoned under Section 5 of Limitation Act provided sufficient cause is shown.

4.12 Award without Reasons :

Subject to a contract to the contrary the existing law in India and in U. K. is that an Award without reasons is valid. This is so because an Award by an arbitrator is not a judicial decision. (See *Rajpur Development Authority vs. Chokhamal Contractors* (1989) (2) Judgments today 285—Supreme Court. However, the question as to whether ordinarily an Award should contain reasons or not is at present engaging the attention of the Hon'ble Supreme Court of India.

4.13 Award of Interest by Arbitrator :

For the purposes of calculation of interest from the date of commencement of the arbitration proceedings, it will be the date on which the Arbitrator enters upon a reference—*Gujrat Water Supply & Sewerage Board vs. Unique Erectors Gujrat Pvt. Ltd.* (Judgments Today, 1989 (1) Supreme Court 285).

The Arbitrator has no jurisdiction to award interest in regard to the cases arising before coming into force of interest Act, 1978 *State of Orissa vs. J. P. Lath* (Judgments Today, 1989 (3) Supreme Court, 340).

The Arbitrator also cannot award interest pendente lite as it is not a court (See *Executive Engineer (Irrigation) Gall Mala and other vs. Abhaduta Jana*, (A. I. R. 1988 Supreme Court 1520) and also *Estate of Orisa vs. Dandasi Sahu*, (A. I. R. 1988 Supreme Court 1791). These cases require reconsideration by the Hon'ble Supreme Court. Please also see State Amendment (U. P.) adding Rule 7-A to the First Schedule,

However, the court can allow interest from the date of the award till the date of decree. This is so in view of the decision of the Supreme Court in the case of Executive Engineer (Irrigation) Galimala (Supra) and Section 29 of the Arbitration Act and Section 34 of the C. P. C. See (*Gujrat Water Supply and Sewerage Board vs. Unique Erectors Gujrat Pvt. Ltd. (Supra)*).

4.14 Judgment in Terms of Award :

If no case has been made out, either to remit an award for reconsideration or to set aside the award, the court will proceed to pronounce judgment according to the award (a specimen filed as Appendix 20) and upon the judgment so pronounced a decree of the court shall follow. The decree so passed must be according to the Award. There is a legislative mandate also incorporated under Section 17 of the Act that no appeal shall lie from such a decree except on the ground that it is in excess of, or not otherwise in accordance with the award.

4.15 Value of Foreign Awards of the Superior Courts of any Reciprocating Territory :

The explanation to Section 44-A of the Civil Procedure Code makes it clear that even when an award in such reciprocating territory has been filed for being made a rule of the court, for the purpose of enforcement in India under the reciprocal arrangement for the enforcement of foreign judgments between such reciprocating territory and India, the award will still be treated as an award and not as a judgment or decree of the court. Such a foreign award is enforceable in India under Sections 4 to 7 of the Foreign Awards (Recognition & Enforcement) Act 1961 (copy filed as Appendix 37).

Foreign Awards :

A foreign award may be enforced under :

- (1) the Arbitration (Protocol and convention) Act, 1937, (copy annexed as Appendix 36);
- (2) the Foreign Awards (Recognition and Enforcement) Act, 1961, (copy annexed as Appendix 37).
- (3) the general law apart from those two acts, as mentioned above.

These Foreign awards are enforceable on the grounds of justice, equity and good conscience.

4.16 Award not Filed in Court-Value of :

The Hon'ble Supreme Court has summarised the legal position in this regard in an unreported case, *Uttam Singh Duggal & Co. vs. Union of India*, referred to in *Satish Kumar vs. Surendar Kumar* (A. I. R. 1970 Supreme Court 833) observed as follows :—

"The true legal position in regard to the effect of an award is not in dispute. It is well-settled that as a general rule, all claims which are the subject matter of a reference to arbitration merge in the award which is pronounced in the proceedings before the arbitrator, and that after an award has been pronounced, no action can be started on the original claim which had been the subject matter of the reference. As has been observed by Mookerjee, J. in the case of *Bhajahari Saha Banikya vs. Behari Lal Basak*, the award is, in fact a final adjudication of a court of the parties' own choice, and until impeached upon sufficient grounds in the appropriate proceedings, an award, which is on the face of it regular, is conclusive upon the merits of the controversy submitted, unless possibly the parties have intended that the award shall not be final and conclusive — in reality, an award possesses all the elements of vitality even though it has not been formally enforced and it may be relied upon in a litigation between the parties relating to the same subject-matter. This conclusion, according to the learned Judge, is based upon the elementary Principles that, as between the parties and their privies, an award is entitled to that respect which is due to the judgment of a Court of last resort."

The Supreme Court has thus, held that a valid award is final and binding upon the parties and no suit could be filed on the additional cause of action.

An award not filed in the court whether can be related upon in Defence :

Such an award has been held by the Allahabad High Court in case of *Kedar Nath vs. Ambika Prasad* (A. I. R. 1974 All. 37) to be entitled, as between the parties and their privies, to the same respect which is due to a judgment of a court of last resort and, therefore, can be relied upon in defence. Such an award may not confer any enforceable right upon the person in whose favour it is made but it cannot be said that is a nullity or non est. *Kashinatha vs. Narsinga*, A. I. R. 1961 Supreme Court 1077).

Award not made any Rule of Court :

An award partitioning property, which is duly registered, would be a

valid deed of partition even though not made a rule of court (*Gadadhar Panda vs. Gangadhar Panda*, A. I. R 1972 orissa 24).

4.17 When a suit lies against an award :

When an award cannot be made a rule of the court under Section 17 of the Arbitration Act, 1940 or under Sections 4 to 7 of the Foreign Award (Recognition & Enforcement Act, 1961), a suit for specific performance of the award is competent under Section 25 of the Specific Relief Act and for the same there is no bar under Section 32 of the Act. This is so because Section 32 of the act bars only a suit to enforce an award which falls within the ambit of the Arbitration Act and not other awards.

Writ Jurisdiction against arbitrators :

Since a writ of mandamus cannot be issued against a private individual, no writ will lie against an arbitrator directing him to file an award in court in accordance with Section 14 of the Act. In case, however an arbitrator has been appointed under a statute e. g. under Section 10-A of the Industrial Disputes Act, his position is that of a statutory arbitrator and if the court is satisfied that the relevant ground exists a writ can be issued against him.

CHAPTER V

STALEMATES IN ARBITRATION AND THE ROLE OF THE COURTS

An arbitration agreement may be of two kinds :

- (a) An agreement in which the manner of making a reference to arbitration is not indicated and no arbitrator is appointed. In such situations, there are certain implied conditions of arbitration agreements as provided in the 1st Schedule of the Arbitration Act. A copy of the said implied conditions of arbitration agreements as provided in the 1st Schedule of the Arbitration Act, has been annexed as Appendix '1' alongwith the amendment as applicable in U.P. Specimen copies of such agreements has also been annexed as found in Appendix '2' and '3'. Specimen copy of usual arbitration clause in a partnership deed is also annexed as Appendix '6'.
- (b) Where the manner of making a reference is indicated, such as—
 - (i) The rules of an arbitral institutions, for example, the rules of Bombay Chambers of commerce, or Indian Council of Arbitration, London Court of Arbitration copies of such byelaws/Rules of arbitral institution have also been annexed as Appendix '4', '5' and 41.
 - (ii) The arbitrator is named. This very often happens in the case of arbitration clauses relating to Public Works Department or Electricity Department Specimen copies of such arbitration agreements are annexed as Appendix '7' and '8'.

Arbitration Act, 1940 makes a distinction between "arbitration" and "arbitration proceedings." The former merely indicates the alternative to litigation. The later indicates the existence of resort to arbitration process. For instance, Section 37(3) of the Act explains how arbitration is commenced. Such commencement brings into existence an arbitration proceeding.

After a dispute is raised and on commencement of arbitration proceedings further progress of the said proceedings is brought with various types of stalemates. Let us study them as to the contingencies when they arise and the remedies to overcome them. In cases in which the parties raise a dispute regarding existence or validity of the arbitration agreement itself, the remedy lies by way of moving an application under Section 33 of the Arbitration Act for determination of such a dispute by the court. This finality of the jurisdiction of the court also exists in India in regard to International arbitration agreement as stated in Section 7(1) (s) (i) of the Foreign Awards (Recognition and Enforcement) Act, 1969. A proforma of such an application under Section 33 of the Arbitration Act is annexed as Appendix '31'.

- (ii) On a dispute arising between the parties, the parties are obliged under the law to refer their dispute to the Arbitrator as per agreement and in case no arbitrator has been named, either by name or by designation or by the arbitral institution the remedy lies by a party to the arbitration agreement to serve on the other party thereto a notice requiring appointment of an arbitrator. Although the law provides a period of limitation of one month and where Government is a party three months (in U.P.) for serving such a notice....

yet it is open to a party to contract out of the said period as provided for by making a notice for a shorter period than a statutory period of limitation. Thus, a notice to appoint an arbitrator or refer a claim to the named arbitrator commences the arbitration. In case there is still a stalemate and the other party does not agree for the appointment of a sole arbitrator or does not appoint its own arbitrator as the case may be, remedy lies by way of moving an application under Section 8 of the Arbitration Act to the Court for making such appointments. Specimen copies of such applications for appointment of an arbitrator or substitution of an arbitrator or appointment of an umpire are annexed as Appendix '9, 11 and 12'. Specimen copies of the orders of reference as also an order of appointment of new arbitrator to be made by the court are also annexed as Appendix '10 and 13'.

- (iii) When parties enter into an arbitration agreement the authority of an appointed arbitrator becomes irrevocable except with the leave of the court. In a case where after entering the reference the arbitrator has misconducted himself and a party desires that his authority be revoked, he has to make an application under Section 5 of the Arbitration Act to the Court. To remove the said stalemate an application lies to

the Court and a proforma copy of such an application is annexed as Appendix '14'

- (iv) If an arbitrator or umpire fails to use all reasonable despatch *in entering on a proceeding* with reference to making an award, it is open to a party to make an application under Section 11 (1) of the Act for removal of such an arbitrator. Specimen form of such an application is being annexed as Appendix '17'.
- (v) In case the arbitrator has before the delivery of award misconducted himself or the proceedings including refusal to take material evidence of a party or has taken some evidence of the other party behind the back of the applicant, in all such cases remedy of the aggrieved party lies before the court by way of an application to remove such an arbitrator or umpire. Specimen form of an application for such removal is annexed as Appendix '18'.
- (vi) If an arbitrator after entering into a reference finds some difficulty in forming an opinion about a question of law that arises before him, it is open to the arbitrator to move an application under Section 13(b) of the Arbitration Act for stating the said question of law for the opinion of the court. This remedy has been provided for so that the proceeding before the arbitrator may proceed properly. A proforma copy of such an application to be moved by the arbitrator is annexed as Appendix '15'. On such an application being moved the court gives notice (copy annexed as Appendix 16) thereof to the parties and after hearing them, shall pronounce its opinion thereon and such opinion shall be added to and shall form part of the award. A specimen of such notice given by the parties for hearing on the question of law referred to is annexed as Appendix '18'.
- (vii) If, however, after the arbitrator had entered into a reference, a party later on discovers after the said reference that the arbitrator in question is a relation of the opposite party the applicant can seek relief from the court for removal of such an arbitrator praying for an appointment of another arbitrator in lieu thereof by making an application under Section 12 of the Arbitration Act. A contingency to move such an application may also arise when the court

had removed an arbitrator who had not entered on the reference at all or when the authority of the arbitrator was revoked by leave of the court. A proforma of such an application is annexed as Appendix '19'. If for some reason the court does not find it fit to appoint a new arbitrator and feels that no useful purpose will be served in arbitration, it may also pass an order that the arbitration agreement shall cease to have effect with respect to the difference referred.

- (viii) In a situation in which there exists an arbitration agreement, yet despite the fact that a dispute between the parties has arisen, yet the opposite party does not honour the said arbitration agreement and is not inclined to proceed with the arbitration, in such a case it is open to a party to the arbitration agreement, to move an application under Section 20 of the Arbitration Act to the court for a prayer that the arbitration agreement be ordered to be filed in the court and an order of reference be made to the arbitrator in terms of the agreement, or to an arbitrator appointed by the court. A proforma copy of such an application under Section 20 of the aforesaid Act is annexed as Appendix '25'. Upon making of such an application the court shall send notice thereof to all parties and pass orders accordingly. Specimen of such notice given by the court and the order passed on such an application are annexed as Appendix '26' and '27'.

- (ix) If there is delay for some reasonable cause in the delivery of the award by the arbitrator in the sense that the time provided for in the arbitration agreement is about to expire and it will not be possible for the arbitrator to deliver the award within the time aforesaid, it is open to the court to enlarge time for making the award. Any provision entitling the arbitrator himself to enlarge the time for making the award, except with the consent of the parties to the agreement shall be, however, void. A proforma copy of such an application under Section 28 of the Arbitration Act is annexed as Appendix '29'.

- (x) If, however, after the above hurdles are got over and the arbitrator ultimately makes an award but does not file the same in court either because his fee or charges are not paid on the opposite party, raises a dispute regarding his fee or charges to be determined by court, the applicant has to

move the court for determination of dispute relating to remuneration or cost of arbitrator under Section 38 of the Act. A specimen of such an application to be moved before the court is annexed as Appendix 33.

- (xi) Now when the court decides the controversy regarding the remuneration and charges of an arbitrator, and such charges are also paid, and on a request being made to the arbitrator to file the award in court, he neglects or refuses to file the award in court so that it may ultimately culminate into a decree of the court, the applicant has to move the court with a prayer for a direction to the arbitrator to file the award in court with full record of depositions and all the documents proved before him by the parties and with further prayer that upon his filing the award in question, further proceedings be taken in accordance with law. A specimen of such application to be moved by a party under Section 14(2) of the Act is annexed as Appendix '21'. A specimen of the notice by the court to the parties consequent upon such an application, is annexed as Appendix '22'.
- (xii) After the award by Arbitrator or Umpire (a specimen of which is annexed as Appendix 20 and 40) is filed in case it is found that three conditions mentioned under Section 30 of the Arbitration Act are existing, that is to say, the arbitrator has misconducted himself or the proceeding or the award has been made after an order of suppression was passed or after the arbitration proceedings had become invalid under Section 35 of the Arbitration Act or the Award was improperly procured or is otherwise invalid, the remedy of the aggrieved party lies in moving an application under Section 30 of the Arbitration Act to the court to set aside the said award. A proforma copy of such an application under Section 30 of the aforesaid Act is annexed as Appendix '30'.
- (xiii) In India a person has a right under Section 9 of the C.P.C. as well as Section 28 of the Contract Act to file a suit in a court of law in regard to a matter of civil dispute. Thus it is also open to a party to the arbitration agreement to commence a legal proceeding in a court of law even in regard to any matter agreed to be referred to arbitration.

In such a situation the suit will prevail over the arbitration agreement unless a stay of such proceeding is granted by court under Section 34 of the Arbitration Act. The defendant of such a case has to apply for the stay of the legal proceedings, otherwise the pendency of the suit on same subject matter will stand in the way of arbitration proceedings. A proforma copy of such an application under Section 34 of the Arbitration Act is annexed as Appendix '32'.

- (xiv) For the various types of orders contemplated to be passed by the court in aid of the arbitration proceedings under the Arbitration Act, the Act also contemplates appeals against the following orders passed by the court :—

An order :—

- (a) Superseding an arbitration,
- (b) On an award stated in the form of a special case,
- (c) modifying or correcting an award,
- (d) filing or refusing to file an arbitration agreement,
- (e) staying or refusing to stay legal proceedings where there is an arbitration agreement,
- (f) setting aside or refusing to set aside an award.

No appeal lies except the orders enumerated above. Also no appeal lies against any order passed by a small cause court. There is also a rider attached to such a right of appeal to the effect that no second appeal lies against an order passed in appeal as above except that an appeal shall lie to the Supreme Court. Specimen form of appeal against the orders is annexed as Appendix 34.

CHAPTER VI

6.1 Pit-falls in Arbitration :

After considering that there are various Stalemates in going ahead with the arbitration which may culminate into an enforceable Award, still there are various pit-falls in arbitration which are worth noticing.

- (i) The Award delivered by an arbitrator is liable to be remitted or modified. As regards the conditions in regard thereto, one will find the same discussed in the following pages. However, a specimen of such applications is being filed as Appendix 24 and 23 respectively.
- (ii) Such an award is also liable to be set aside in toto. The grounds for setting an award are set out in this chapter later. However, a specimen of such an application is being filed as Appendix 30.
- (iii) The pleadings by way of applications to the court under the Arbitration Act may not be found to be in accordance with the rules of the Court and hence may be rejected. A copy of the relevant Rules made by the Allahabad High Court is filed as Appendix 38.
- (iv) Upon the filing of the civil suit in regard to a matter where dispute relating to an arbitration agreement exists the court may in an appropriate case stay either the proceedings in the suit itself or may refuse to stay thereby relating to the party to pursue the very remedy under the Arbitration Agreement. Such grant or refusal of the stay is in the discretion of the court. A specimen of form of application to be filed under Section 34 of the Act for stay of the suit is annexed as Appendix 32. However, when will the court exercise its discretion to refuse stay has been enumerated later.

But there is a statutory rider attached to it. Upon an application being made for stay, if the defendant 'takes steps' by way of filing of a written statement in furtherance

- of the suit itself, this means that the defendant has waived his right for the continuance of the arbitration proceedings.
- (v) In a pending suit, the parties may at any stage agree for having their differences settled through arbitration rather than in the court. In such a case an application has to be made to the court to refer their dispute to arbitration under section 21 of the Act. A specimen form of such an application and of an Award given thereafter is filed as Appendix 28, and 39
 - (vi) Even if the parties are proceeding in an arbitration but if the legal proceedings upon the whole of the subject matter of the reference have been commenced between all the parties to the reference and a notice thereof has been given to the arbitrator or for the proceeding in a pending reference shall be invalid under section 35 of the Arbitration Act unless a stay of the proceedings is granted by the court under section 34 of the aforesaid Act.
 - (vii) The court has still powers to pass appropriate interim orders even after the Award and pending the execution of the decree in terms of the award when this power is to be exercised has been discussed later. Specimen form of such application is annexed as Appendix 35.
 - (viii) If the parties are not satisfied with the Award they may compromise the dispute as indicated below.
 - (ix) If a person makes a default in complying with the orders of the court, the court, has power to impose penalty or punishment to secure compliance. The Arbitrator does not have any such power. Therefore, despite an arbitration agreement under which the parties have already chosen their forum, still for the default indicated above, a person is exposed to finality or punishment.

6.2 Compromise after the Award :

The Arbitration Act does not disable the parties from terminating their dispute in a different way, hence if the parties are dissatisfied with the award and want to substitute it by a compromise by modification of the award, in such a contingency it has been held by the Hon'ble Supreme Court—(See in case *Munshi Ram Vs. Banweri Lal*, AIR 1962 SC 903) that the court May follow one of the two modes indicated by the Privy Council in Hemanta Kumari case (AIR 1919 PC 79), the said courses are, (a) if the whole of the subject matter of the compromise is within the reference, the

court may include in the operative part of the decree the award as modified, and (b) if it is not so, the court may confine the operative part of the decree to the award as far as accepted and other terms of settlement which form a part thereof if severable and within the original reference, in a schedule to the decree. The result will be that the portion included in the operative part would be executable, but the agreement included in the schedule would be enforceable as a decree, such an agreement in the schedule will be evidence of the decree.

6.3 Power of court to modify an award :

(i) After the award has been delivered, if the court finds that any of the following three conditions exist, it may exercise its jurisdiction of modifying or correcting an award;

- (a) Where it appears that a part of the award is upon a matter not referred to arbitration and such part can be separated from the other part and does not affect the decision on the matter referred; or
- (b) Where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision; or
- (c) Where the award contains a clerical mistake or an error arising from an accidental slip or omission.

Such power vested in the court under Section 15 of the Arbitration Act to modify or correct an award can be exercised even after a decree is passed in terms of the award (See *Mohammad Mumtaz Ali Vs. Mohammad Sadat Ali Khan*, AIR 1932 Oudh, 293). However, when a portion which is erroneous is separable from the rest, the court may set aside that portion and uphold the rest (*Upper Ganga Valley Electricity Supply Co. Vs. U. P. State Electricity Board*, AIR 1973 Supreme Court 673).

6.4 (ii) Power to remit the award :

In case it is found that none of the conditions for modification or correction of an award are present and a party is dissatisfied with the award the court may from time to time remit the award or any matter referred to Arbitration to the arbitrator for reconsideration under section 16 of the Act upon such terms as the court thinks fit, in the following three conditions;

- (a) Where the award *has left undetermined any of the matters* referred to arbitration, or where it determines any matter not referred to arbitration and such cannot be separated without affecting the determination of the matters referred;

Principles to Judge, if an award has left any matter undetermined.

In the case of *Santa Sila Devi vs. Dhirendra Nath Sen*, (A. I. R. 1963 Supreme Court 1677) in order to judge as to whether or not any matter has been left undetermined regard shall be had to the following basic principles :—

- (i) The court should approach an award with a desire to support it, rather than to destroy it (*Selby Vs. Whitbread & Co.* (1917) 1 KB 736 (748).
- (ii) The Arbitrator may deliver a consolidated award and unless so specifically required, the award need not formally express the decision of the arbitrator on each matter of difference as the arbitrator is not bound to deal with each claim separately (*Re Brown & The Coodon Canal Co.*, (1839) 9 AD & Ell 522 : 112 ER 1309 ; *Fowell Vs. Christie* (1867) 2 CP 226).
- (iii) Unless a contrary intention appears, the court will presume that the award disposes finally of all matters in difference. (*Harrison v. Creswick* (1853) 138 ER 1254 : 13 CB 399).
- (iv) If an award is made de praeiudicio, the presumption is that the arbitrator is intended to dispose of finally all the matters in difference.
- (v) If the award is silent in respect of certain items of the claim, it may be inferred that the arbitrator intended to disallow the same.
 - (b) Where the award is so indefinite as to be incapable of execution ;
or
 - (c) Where an objection to the legality of the award is apparent upon the face of it.

It may be borne in the mind that this remission of the award is in the discretion of the court. If there is no objection by either party, the court is not bound "suo motu" to remit the award under Section 16 of the Arbitration Act. It is only existing and alive award that can be remitted for reconsideration. An award which has been set aside by the court cannot be remitted for reconsideration. This jurisdiction to remit the award can be exercised only before a decree is passed in terms of the award. When the arbitrator has omitted to decide some of the matters of the arbitration or has committed an error of law which appears on the face of the award the proper course is to remit the award—A. I. R. 1963 All 269. Except in special circumstances, the award should be remitted to the same arbitrator or umpire who made the original award.

Proceeding before the arbitrator when the award is remitted by the court Under Section 16.

The method of conducting further arbitration proceedings after remission will depend upon the arbitrator to whom the award is remitted. When the whole case is remitted, the arbitrator must hear fresh evidence, if tendered and if he declines to do so the award is liable to be set aside under Section 16(2) of the Act. The court must fix the time within which the arbitrator or umpire will resubmit his award.

Distinction between powers of court in "remission" and setting aside an award.

From an examination of the word "remit" used under Section 16 of the Arbitration Act it is clear that if the necessary grounds are made out, the court has a discretion to remit the award for reconsideration but such discretion has to be judiciously exercised. However as we shall examine now under Section 30 of the Act, there is no such discretion left with the court and in case a party has succeeded in making out a case which satisfies the conditions laid down under Section 30 of the Act, the court has no option or discretion left in the matter except to set aside the award.

6.5 Grounds for setting aside award :

We have seen above that Section 15 and Section 16 of the Arbitration Act specify the circumstances under which an award might be corrected and modified or remitted back for re-consideration. Section 30 of the said Act, however, empowers the court and states the grounds on which such an award may be set aside. The said grounds are as follows :

- (a) that an arbitrator or umpire has misconducted himself or the proceedings ;
- (b) that an award has been made after the issue of an order by the Court superseding the arbitration or after the arbitration proceedings have become invalid under Section 35 ;
- (c) that an award has been improperly procured or is otherwise invalid.

The aforementioned grounds are exhaustive in the sense that an award is liable to be set aside only on the said grounds. The court which has jurisdiction to entertain an application for setting aside the award is the court in which the award has been filed or cause to be filed.

It may be made clear at this stage that an award is not open to challenge on the ground that the arbitrator has reached on a wrong

conclusion either on a question of fact or in law or has failed to appreciate facts. This is so far the reason that, finality attaches to the decision of the arbitrator who is the Judge of both the questions of fact as well as law referred to him by the parties. If none of the grounds mentioned above are made out by an applicant, the award cannot be set aside. The provisions contained in Section 30 and Section 16 of the Act which relates to remission of the award are, however, not usually exclusive. Section 30 is mandatory in character, that is, to say if the conditions mentioned in the section are satisfied. Then only the court is obliged to set aside the award. The position thus is that after an award is set aside under Section 30, it is open to the parties to have recourse to arbitration in case the arbitration agreement survives and in that event the court may remit the award for re-consideration on the grounds mentioned under Section 16 of the Act.

6.6 Misconduct of Arbitrator—What is :

Let us now consider what is mis-conduct for the purposes of clause (a) of Section 30 of the Act. Mis-conduct may occur at any stage between clause (a) the appointment of an arbitrator or umpire ; clause (b) entering upon the reference ; clause (c) the course of the proceedings and clause (d) the making of the award.

In so far as the mis-conduct of the arbitrator himself is concerned, it will include such conduct of the arbitrator as :—(i) bribery and corruption (ii) partiality and bias, (iii) disqualification or want of qualification of the arbitrator or umpire, (iv) dishonesty, (v) personal knowledge of or personal interest in the dispute ; and (vi) defect in appointment of the arbitrator or umpire. If the defect is a mere irregularity and not want of jurisdiction, the arbitration proceedings are not vitiated.

Mis-conduct in the proceedings will consist of and include : (i) acting without jurisdiction or in excess of it ; (ii) failure to follow the procedure ; (iii) failure to give a fair opportunity of being heard to the parties ; (iv) breach or neglect of duty.

The word mis-conducted the proceedings will also include defect in the award that is to say an error apparent on the face of the award or an award going beyond the reference or an award influenced by extraneous circumstances or considerations or an award based on no evidence or an award regarding inconsistent findings and also a decision in the award by ignoring material documents on record.

Arbitrator in the Employment of a contracting party : Engineers, Architects etc. :

This situation arise in agreements with the Government or corpora-

tions relating to execution of works or supply of materials. Very often we find that in these types of contracts the arbitration clause provides and appoints an arbitrator who is an Engineer or Architect or the Officer of the Government or the Corporation. It may be argued that such a person, if he enters on the reference and decides the dispute, he acts as a Judge in his own cause, but such stipulation in the arbitration agreement have been upheld both in England as well as in India. The mere fact that such an Engineer or Architect has a duty to watch the performance of the contract and, therefore, he might have formed an opinion on the matters in dispute is not enough in the absence of any evidence that he would not act fairly. In the case of *Registrar Cooperative Societies vs. Dharam Chand* (A.I.R. 1961 S.C., 1743), the Supreme Court has upheld the award given by the arbitrator and has held that there could not be any official bias in the Registrar in connection with the dispute.

Non-disclosure of arbitrator's name :

Any arbitration relating to the members of the Chambers of Commerce some times the rules provide for the non-disclosure of the names of the arbitrators to non-members. Objection raised that it was not a valid arbitration has been negated by the courts. This is so on the ground that the rules are a bargain between the parties and they will be bound by the same (See *Union Textile Tracers vs. Bhawani Cotton Mills*, A. I. R. 1970 S.C., 1940. This is so on the ground that the arbitrator is the Chamber of Commerce and not the nominees of Chamber of Commerce.

Personal knowledge of the arbitrator :

This is an implied term of the arbitration agreement that the arbitrator will decide the dispute in accordance with ordinary law and if an arbitrator imports personal knowledge for consideration in the award, the validity of the said award will depend on the terms of the reference to arbitration, (See *Dewan Singh vs. Champat Singh* A I.R. 1970 S.C. 967). But where the reference to arbitration gives the arbitrator an option either to take evidence or to decide the case upon his own personal knowledge, such an arbitrator can make use of his own personal knowledge in the disposal of the case. However, an arbitrator will not be entitled to rely on evidence recorded or information obtained behind the back of the party adversely affected by it. (See *Banwari Lal vs. Jagannath Prashad* A.I.R. 1958 Alld., 717). If an arbitrator is appointed on account of his skill and knowledge of the subject, he is justified in refusing to receive evidence and can be guided by his own knowledge.

Rules of Procedure

An arbitrator need not strictly follow the rules of procedure in evidence yet he cannot dispense with the substance of justice. The arbitrators are free to admit such evidence as they consider material and relevant and exclude the evidence which they consider irrelevant.

Inspection by an arbitrator

An arbitrator will not be guilty of mis-conduct merely because he does not accept the request of a party to inspect a particular place or thing.

Proceedings before the arbitrators :

The arbitrators should generally keep a record of proceedings before them, though under the law they are not compelled to do so. Similarly omission to sign the proceedings by one or the other of the arbitrators would not constitute misconduct and will not affect the validity of the award. (See *Damodar Valley Corporation vs. Ikras Nandi Coal Co.*, A.I.R. 1972, Cal. 153.

Proceedings against dead person :

The legal representative of a deceased should be brought on record otherwise in the absence thereof the award would be vitiated.

Ground of adjournment :

It is always open to the arbitrator to refuse frivolous and dilatory requests for adjournment.

Representation through lawyer :

If the arbitrator refused a claimant to be represented by a lawyer, it will not amount to mis-conduct (See *N.M.Verma and Company Vs. G. Ambalal* A.I.R. 1956 Cal., 476). Where the Rules of Arbitration of a certain chamber specifically provided that no party shall be entitled to appear before the arbitrators through a lawyer without their permission, it is within the discretion of the Arbitrators to permit a party to be so represented or not.

Value of an award which has been set aside :

When an award is set aside, the same cannot be looked into at all.

Authority of the Arbitrator after the award is set aside :

As soon as an award is delivered the arbitrator becomes functus officio. If such an award is set aside there is no authority left to an arbitrator to re-enter and decide the dispute unless there is a fresh agreement entered into by both the parties. (See *Parbati vs. Durga Devi*, A.I.R. 1928 Lah., 170). The

Calcutta High Court has, however, taken a different view in *Morgan Walker and Co. Vs. Khardah Co. Ltd.*, A.I.R., 1959 Cal., 169).

6.7 Principles regarding stay of legal proceedings (Section 34)

In case a party to an arbitration agreement chooses to file a suit in regard to matters, covered by the arbitration agreement, the defendant may either apply for stay of the suit or defend the suit itself and get a decision on the merits by the Court. Section 34 of the said Act provides that if a party who has already entered into an arbitration agreement would not be allowed to take recourse to regular suit and in case he does so, the proceedings so filed in court are liable to be stayed. The object underlying the said provision is to make an arbitration agreement effective and to prevent a party from coming to court contrary to his own agreement so that the dispute could be adjudicated by a private tribunal as had already been agreed to between the parties. The approach of the court should be to see that the parties are held to their bargains and not encouraged to take recourse to civil litigation despite their specific agreement in regard to the disputed matters (*See Ramji Dayawala & Sons (P) Ltd. vs. Invest Import* (A.I.R. 1981 Supreme Court 2085).

In accordance with the said provisions, in order to obtain an order of stay of the suit and for relegating the plaintiff to have recourse to the private tribunal, the following conditions must exist :

- (i) There must be a valid agreement in existence,
- (ii) The proceedings must be with reference to the matters agreed to be referred to arbitration.
- (iii) The legal proceedings must have been started after the agreement to refer either by a party to the agreement or against any person claiming under him.
- (iv) The application for stay so made by the defendant is filed before the filing of the written statement or taking any step in the proceeding, and;
- (v) The party asking for stay must be ready and willing to do all things necessary for proper conduct of the arbitration. (*Food Corporation of India Vs. Thakur Shipping Co. & others*, A.I.R. 1975 SC 489).

Such readiness and willingness must be :

- (i) at the time of commencement of suit, and
- (ii) at the time of application for stay is made.

Taking 'any other steps' in the proceedings :

The expression 'taking any other steps in the proceedings' connotes the idea of doing something in aid of the progress of the suit or submitting to the jurisdiction of the court for the performance of adjudication on the merits of the controversy in the suit. Step must be such as would clearly and unambiguously manifest the intention to waive the benefit of arbitration agreement. (*Food Corporation of India vs. Yadv Engineering & Contractor* (1983) (1) Supreme Court Reporter 95 and also in *RG Bijapur vs. G. Nuramappa & others*, Judgments Today 1988 (4) Supreme Court 497)

In regard to the words 'taking any steps 'in the proceeding' The U. P. Civil Laws (Reform and Amendment Act) 57 of 1976 has added Explanation II to Section 34 of the Act. This explanation is effective from 1st January, 1977 and provides that a mere application for time to file a written statement or a mere contest to an inter locutory application for injunction, the appointment of Receiver or they like, shall not amount to taking any step in the proceeding.

From the above, it is also clear that the right to seek stay of the judicial proceedings vests in a party by virtue of the fact that he is a party to arbitration agreement and the authority is provided under Section 34 of the Act. to move such an application. Any party to the agreement can invoke this jurisdiction of staying further proceedings in the court with regard to the subject matter of the arbitration agreement.

To decide the existence of an arbitration agreement for the purposes of stay of legal proceedings, the Supreme Court has in the case of *Anderson Wright Ltd. vs. Moram & Co.* (A.I.R. 1955 SC 53) emphasised that two matters are to be considered, viz.

- (i) what is the dispute in the suit; and
- (ii) what disputes the arbitration clause covers.

Thus, the very foundation for the jurisdiction of the Court to stay the trial of a suit, is existence of an arbitration agreement and where the existence or validity of an arbitration agreement is challenged, the Court ought to decide that question first. Care should be taken to see that this provision regarding stay of suit is not applicable to statutory arbitration or foreign arbitration.

Nature of proceedings for stay :

The proceedings are summary in nature but an order passed on the stay application either staying further proceedings or refusing to stay is open to appeal and not revision:

Such an application for stay must specify the dispute or difference and that it falls within the scope of arbitration agreement of necessity. This dispute has to be between the same parties. The stay application has to be moved properly. See proforma 32 in Appendix. In order to judge whether the subject matter of the suit is within the submission, the pleadings have to be seen as they stand and not as they ought to be. Any delay might affect discretion of the Court against the party making application. On an application so made, the court has yet a discretion to stay (*The Printers (Mysore) Pvt. Ltd. Vs. Pothan Joseph* (A.I.R. 1960 Supreme Court 1156). In case such a stay is granted, the parties are relegated to the arbitration agreement. If no application for stay is made or if stay is refused by the Court, in such a situation any award given by the Arbitrator in respect of the same dispute will be unenforceable (See Section 35 of the Arbitration Act).

When stay is refused :

Although it is normal duty of the Court to hold parties to contract and make them present their dispute to the forum of their choice, yet the stay can be refused by the Court in its discretion more particularly in the following circumstances.

(a) If it comes to the conclusion that the dispute involves a substantial or an important and intricate question of law which is bound to come back to the Court by way of a special case :

(b) If the plaint allegations disclose that the subject matter of the suit or a substantial part of the plaint would be outside the scope of the arbitration clause, stay may be refused (*Sunderdas Thakarsay and Bros Vs. The New Commercial Mills Co. Ltd* (A.I.R. 1971 Calcutta 398).

(c) When some of the defendants are not parties to the arbitration agreement, stay will be refused (*Barium Chemicals Vs. Bombay Industrial and Chemical Co., A.I.R. 1977 Andhra Pradesh page 400*).

(d) When the arbitration proceedings are being delayed due to the conduct of the applicant for stay the court may refuse to grant the stay (*Laxminarain Jute Manufg. Co. Vs. Bangur Bros. Ltd., A.I.R. 1968 Calcutta 330*).

(e) When the Court is satisfied that applicant for stay has flouted orders of the Court and is likely to cause obstruction in arbitration proceedings, the prayer for stay may be refused by the Court (*Ramani Mohan vs. Gouri Rani, A.I.R. 1977 Cal. 128*).

(f) Where serious allegation regarding reputation of the arbitrator has been made, stay should be refused (*Yeshont Vs. Usha Kumar, A.I.R. 1985 Mad. 272*).

(g) If it can be shown that there is good ground for apprehending that the arbitrator would not act fairly in the matter or that it is for some

reason improper that he should arbitrate in the dispute (*U.P. Cooperative Federation Ltd. Vs. Sunder Bros.*, A.I.R. 1967 Supreme Court 249).

(h) Suit challenging the existence or validity of a contract entending the arbitration agreement cannot be stayed (*Koppers India (P) Ltd. Vs. Balraj Chaura*, A.I.R. 1980 Cal. 173).

(i) If for any reason the arbitration becomes impossible the Court ought to proceed to decide the suit itself

(j) Matter in dispute involves a charge of fraud (*Red Ford Vs. Hare* (1971, 2, All England Reporter 1089)-

(k) Where the relief asked for is a matter in the discretion of the Court under a statute for example the dissolution of Partnership or grant of injunction etc.

(l) Balance of conveniences in order to avoid multiplicity of proceedings. (*See Mickel Golodetz Sirajjudin & Company*, A.I.R. 1963 SC 1044).

(m) Suppression of facts (*Chartered Bank Vs. Commissioner for Port of Calcutta*, A.I.R. 1972 Calcutta 198).

(n) The award when filed would be a nullity (*K.T. Chettiyar Vs. Thos Smith & Company*, A.I.R. 1935 Bombay).

(o) Arbitrator named in the agreement is dead,

(p) Conduct of the applicant is such as disentitles him for the grant of stay prayed for.

(q) The dispute involves charges against the character of one of the parties (*Union of India Vs. Ghee Vyapar Mandal*, A.I.R. 1951 Allahabad 546)

(r) Where the Conduct of High Officers will have to be determined and the Arbitrator is a officer of equal or lower rank (*Gauri Shanker & others Vs. Union of India*, A.I.R. 1953 Allahabad 446).

(s) The arbitrator cannot give the relief the plaintiff wants and the plaintiff will still have to file a suit for the same (*Chartered Bank Vs. Commissioner of Port of Calcutta*, A.I.R. 1972 Calcutta 198).

(t) The court comes to the conclusion that complete justice cannot be obtained between the parties in arbitration (*Mejet Subbiah & Company Vs. titley & Whitely*, A.I.R. 1920 Madras 693).

(u) Where the stay would result in splitting of the suit against different defendants, when all the defendants were not parties to the arbitration agreement (*Barium Chemicals Vs. Bombay Industrial & Chemical Company*, A.I.R. 1977 Andhra Pradesh page 400).

(v) No stay of the suit, if the suit is for divorce or restitution of conjugal rights.

(w) When a professional man's reputation would be at stake (*Turner Vs. Fenton 1982 All. England Reporter* page 8 (Ch. D).

(x) When a question is about the own jurisdiction of the arbitrator (*General Bill Posting Company Vs. Atkinson (1908) 1 Ch. D. 537*).

When Stay order might not be refused

If for any reason the arbitration becomes impossible, the court ought to proceed to decide the suit itself.

Suit how dealt after stay

Ordinarily stay is permanent unless the order directing it provides otherwise.

6.8. Revival of suit :

The Allahabad High Court has taken the view that in certain circumstances the proceedings in the suit may be revived. It has been pointed out that there may be four kinds of arbitration clauses;

- (i) the clause may provide for arbitration by an arbitrator to be appointed by the plaintiff;
- (ii) it may provide for arbitration by an arbitrator to be appointed by the defendant;
- (iii) it may provide for arbitration by arbitrators to be appointed by both; and
- (iv) it may provide for arbitration at the instance of either of them by an arbitrator named therein.

In the second case it is for the defendant to take the initial step; and in the third case the initial step cannot be taken without the defendant joining in the same. If the defendant does not take the necessary step, the plaintiff may request the Court to revive the proceedings in the suit. In the first case, however, the initial step has to be taken by the plaintiff, and in the fourth even by him. If he does not take the step, he cannot ask the proceedings in the suit being revived,

- (v) When proceedings before the Arbitrator become invalid.

6.9. Effect of legal proceedings on arbitration :

In the celebrated case of the King's Bench in the case of *Doleman & Sons Vs. Ossett Corporation (1912) 3 KB 257*, it was observed by the court that if the court had refused to stay an action or if the defendant has abstained from asking it to do so, obviously the court has noisin of the dispute. In that situation the matter cannot be proceeded with in the private

tribunal as well, for there cannot be two tribunals each with the jurisdiction to insist on deciding the rights of the parties and to compel them to accept its decision. Therefore, in the said case it was held that an arbitrator has no authority to adjudicate upon a matter it has already been the subject of an action unless an order of stay is made by the court. This is so because the public tribunal i.e. the court alone must decide the dispute and cannot be hampered by any adjudication thereupon made by the private tribunal. The essence of the rule enunciated in Doloman's case, therefore, is that the law does not permit the same question to be decided by a court of law as well as by the Arbitrator. Therefore, when a dispute before the two tribunals is identical, the decision given by the arbitrator must be treated as ultra vires. It is the identity of the disputes before the two authorities which is the ratio of the rule in Doloman's case. The Allahabad High Court in the case of *Chunnilal Vs. Phool Chand* (A.I.R. 1922 Allahabad 48) accepted the said rule in Doloman's case subject to the authority of the court to grant stay under Section 19 (now Section 34) of the Act. The said rule in Doloman's case has been improved upon by the Legislature by incorporating Section 35 in the Arbitration Act.

Three changes have been brought about in the existing law by section 35 of the Act :

- (i) The Doloman's case rule no longer applies unless the legal proceedings are upon the whole of the subject matter of the reference.
- (ii) The rule does not come into operation until notice has been given to the arbitrators or the umpire.
- (iii) It is only the further proceedings, which unless stay has been granted under Section 34, will be invalid, the old rule being that if there was anything left to arbitrate about after the legal proceedings were finished, the arbitrators had to start de novo.

Thus, it has been provided that if the legal proceedings have commenced between the parties (i) such proceedings must be between all the parties to the reference, (ii) the legal proceedings must be commenced with respect to the whole of the subject matter of the reference; and (iii) notice of the commencement of the legal proceedings is given to the arbitrators.

If all the three conditions are satisfied, then all further proceedings before the arbitrators would be invalid. The Arbitrator would be functus officio from the time notice is given to him. These provisions embodied under Section 35 of the Act are a corollary on the counter part of Section 34 of the Act.

So, if however, the legal proceedings are subsequently stayed by the court under Section 34, the invalidity will disappear and the Arbitrator would again become entitled to proceed with the arbitration. These provisions of Section 35 of the Act do not apply to foreign arbitrations. Where, however, a plaintiff withdraws his suit after the defendant waives his right to have the suit stayed or his application is rejected, the authority of the arbitrator would not revive and he will not be entitled to proceed with arbitration after such withdrawal of the suit. The plaintiff will, of course, lose his rights under the original cause of action unless the withdrawal is with permission to file a fresh suit on the same cause of action. If the defendant claims any rights under the original contract, he will have to file his own suit separately. He will not be entitled to have recourse to arbitration unless there is a fresh arbitration agreement.

6.10 Power of Court to pass interim orders :

At any time after the filing of the award, whether notice of the filing has been served or not, upon being satisfied by affidavit or otherwise that a party has taken or is about to take steps to defeat, delay or obstruct the execution of any decree that may be passed upon the award, or that speedy execution of the award is just and necessary, the Court may pass such interim orders as it deems necessary. But as stated in *H.M.K. Ansari Vs. Union of India* (A.I.R. 1984 Supreme Court 29) the Supreme Court has held that these powers of granting interim relief by way of a temporary injunction etc. can be exercised only when the arbitration proceeding has commenced or is pending but not otherwise. However, such an interim order passed by the court, is not open to appeal.

CHAPTER VII

Changing trends in favour of Arbitration :

From the above discussion it is clear that Arbitration as an alternative to litigation has developed mainly because of its following advantages over litigation, namely :

- (a) speed.
- (b) inexpensiveness.
- (c) informality.
- (d) experties.
- (e) choice of the arbitrator by the parties and
- (f) finality.

It is advantageous in cases involving disputed questions of facts, e.g. whether goods are upto sample or the assessment of damages or compensation is reasonable. But in complicated matters where intricate questions of law are likely to arise, legal proceedings are the better course. Sometimes it appears that the object of arbitration is being abused. Very often it is found to be more expensive and protracted than litigation. This is not due to the inherent defect of the machinery by human agency. Honest men dread arbitration more than they dread law suits.

The fact remains that although arbitration is of a very early origin, but it has developed with time. It has become a popular means of settling disputes in international, national and commercial spheres. It is still a progressive subject. In India it is worth trial and encouragement more and more in our present set up.

CHAPTER VII
APPENDIX 1

THE FIRST SCHEDULE

(See Section 3)

Implied Conditions of Arbitration Agreements

1. Unless otherwise expressly provided, the reference shall be to a sole arbitrator.

2. If the reference is to an even number of arbitrators, the arbitrators shall appoint an umpire *not later than* one month from the latest date of their respective appointments.

N.B. In U. P. for the words "not later... their respective appointments" at the end, substitute :

"Within one month from the latest date of their respective appointments or within such extended time as the parties to the reference agree to, and in the absence of such agreement as the court may allow."

3. The arbitrators shall make their award within four months after entering on the reference or after having been called upon to act by notice in writing from any party to the arbitration agreement or within such extended time as the court may allow.

4. If the arbitrators have allowed their time to expire without making an award or have delivered to any party to the arbitration agreement or to the umpire a notice in writing stating that they cannot agree, the umpire shall forthwith enter on the reference in lieu of the arbitrators.

5. The umpire shall make his award within two months of entering on the reference or within such extended time as the court may allow.

N.B. In U. P. for the words "the court may allow" at the end, read :
"the parties to the reference agree to, and in the absence of such agreement, as the court may allow,"

6. The parties to the reference and all persons claiming under them shall, subject to the provisions of any law for the time being in force,

submit to be examined by the arbitrators or umpire on oath or affirmation in relation to the matters in difference and shall, subject as aforesaid, produce before arbitrators or umpire all books, deeds, papers, accounts, writings and documents within their possession or power respectively which may be required or called for, and do all other things which, during the proceedings on the reference, the arbitrators or umpire may require.

7. The award shall be final and binding on the parties and persons claiming under them respectively.

IN UTTAR PRADESH

7-A. Where and in so far as an award is for the payment of money, the arbitrators or the umpire may, in the award, order interest at such rate as the arbitrators or umpire may deem reasonable to be paid on the principal sum awarded, from the date of the commencement of the arbitration, as defined in sub-section (3) of Section 37, to the date of award, in addition to any interest awarded on such principal sum for any period prior to such commencement, with further interest at such rate not exceeding six per cent per annum as the arbitrators or umpire may deem reasonable on such principal sum from the date of the award to the date of payment or to such earlier date as the arbitrators or umpire may think fit, in no case beyond the date of the decree to be passed on the award.

8. The costs of the reference and award shall be in the discretion of the arbitrators or umpire who may direct to and by whom and in what manner, costs or any part thereof shall be paid, and may tax or settle amount of costs to be so paid or any part thereof and may award costs to be paid as between legal practitioner and client.

(22)

APPENDIX 2

**Arbitration Agreement to submit present difference
to Single Arbitrator**

In the Matter of the Arbitration Act, 1940

Whereas differences have arisen and still subsisting between A. B. of _____ and C. D. of _____ Concerning (State matters of difference). Now, we, the said parties A. B. and C. D., do hereby refer the said matters in differences to the award of such a person as may be mutually agreed upon.

(Signed) A.B.
C.D.

APPENDIX 3

**Appointment of single arbitrator under agreement
to refer future differences to arbitration**

In the matter of the Arbitration Act, 1940

Whereas by an agreement in writing, dated the _____ day of _____
19____ and made between A.B. of _____ and C.D. of _____ it was
provided that differences arising between the parties thereto should be
referred to an arbitrator as therein mentioned ;

And whereas differences within the meaning of the said provision
have arisen and still subsisting between the said concerning.

(State matters of difference)

Now, we, the said A.B. and C.D. do hereby agree to refer the said
matters in difference to the award of such a person as may be mutually
agreed upon.

Dated the _____ day of _____ 19____

(Signed) A.B.
C.D.

APPENDIX 4

Bombay Chamber of Commerce and Industry

BYE-LAWS OF THE BOMBAY CHAMBER OF COMMERCE & INDUSTRY TO REGULATE THE ARBITRATION OF COMMERCIAL DISPUTES BY THE CHAMBER

as adopted at a Special General Meeting of Members of the Chamber held on Friday, 13th November, 1953. These By-laws supersede those which were in existence up to that date

1. In these Bye-laws and in Schedule annexed hereto—

- (1) "The Chamber" means the Bombay Chamber of Commerce.
- (2) "The Committee" means the committee for the time being of the Chamber.
- (3) "The Secretary" means the secretary for the time being of the Chamber, or such other member of the staff of the Chamber as shall be acting for him from time to time.
- (4) "The Act" shall mean the Indian Arbitration Act, 1940 or any statutory amendment thereof or other Act or Acts for the time being in force in the Union of India containing the provisions of the Legislature relating to Arbitration.

2. The committee shall, as and when necessary, make a list of such members, assistants to members, and other persons as shall, in the opinion of the committee, be qualified and as shall have signified their willingness to act as arbitrators and or umpire, and may add to or withdraw names from such list at their discretion.

3. When two members of the Chamber, or when one member and a party who is not a member, or when two parties who are not members have agreed to refer any dispute between them to arbitration under the rules of the Chamber, the committee will upon receipt of (1) the contract or true copy thereof under which the arbitration agreement is made and/or (2) a requisition on the form which may from time to time be prescribed by the

committee, forthwith appoint through the secretary, two arbitrators and an umpire to act accordingly.

4. The committee shall select, as arbitrators or umpire, as the case may be, so far as possible, persons or a person having practical knowledge of the subject-matter of the contract or contracts in question, and the committee shall not appoint any person who for any reason within their knowledge would not be a proper person to act as arbitrator or umpire in the particular matter, but no award shall be invalid nor shall any objection be taken thereto by any party, on the ground that any person so appointed did not possess such practical knowledge, or was not in fact a proper person to act as arbitrator or umpire.

5. Prior to accepting appointment the arbitrators or umpire, as the case may be, shall not be given the names of the parties but only particulars of the dispute, in which they are invited to act as arbitrators or umpire.

6. The consent to act the arbitrators or umpire, as the case may be, shall be obtained in writing by the secretary on behalf of the committee.

7. The appointment of the arbitrators and umpire shall be recorded on a form prescribed by the committee and notice that the appointment has been made shall be given in writing to both parties by the secretary on behalf of the Committee.

8. The names or name of the persons or person appointed as arbitrators or umpire, as the case may be, shall not ordinarily be disclosed to the parties nor shall the parties be entitled to such information as of right. In the event of any of the parties applying on special grounds (to be specified in writing to the committee) for the disclosure of the said names or name the decision as to whether such disclosure shall be made or not shall rest in the absolute discretion of the committee. The non-disclosure of the said names or name shall not in any case affect the validity of the arbitration proceedings or of any award therein nor afford ground of objection to the filing of the award.

9. The parties shall within two weeks from the date of the application, prepare and submit to the arbitrators or umpire, through the secretary, in duplicate a written statement of their respective case with copies of all relevant documents and other evidence on which they rely. A copy of each party's case shall be given to the other party who shall respectively be entitled to put in a rejoinder thereto within such time as may be directed. Normally no more than one rejoinder shall be filed, but the arbitrators or umpire shall have discretion if they or he think or thinks fit to allow more than one rejoinder, on such items as they or he may impose.

10. The arbitrators or umpire, as the case may be, may at their or his discretion enlarge the time for submission of a written statement or rejoinder, but they or he shall not be bound to receive or to consider any written statement or rejoinder of either party tendered after the expiration of the original or subsequently extended time as the case may be.

11. If the arbitrators fail to make their award within the prescribed time or fail to agree upon their award, or if the arbitrators make an award, not being an interim award, upon part only of the subject-matter of the reference, then the umpire appointed by the committee shall forthwith enter on the reference in respect of the matters which the arbitrators have been unable to agree upon and which do not form part of their award.

12. If either of the appointed arbitrators or the umpire neglects or refuses to act or is incapable of acting or dies the committee shall substitute and appoint a new arbitrator or umpire as the case may be in accordance with the provisions of the Act.

13. Where the requisition for the appointment of arbitrators is signed by one party only under a contract which includes a clause referring disputes to arbitration under the rules of the Chamber, the committee shall give the notice in writing of the receipt of such requisition to the other party and if such other party shall fail for fifteen clear days after the service of such notice in accordance with by-law No. 29 to sign a requisition for the appointment of arbitrators the committee will forthwith appoint one arbitrator to act as sole arbitrator in the reference and his award shall be binding on both parties as if he had been appointed by consent. During the said period of fifteen days the party in default shall be at liberty to submit particulars in writing of his contentions in regard to the dispute. The committee may, at their discretion enlarge the time for the appointment of a sole arbitrator or for submission of particulars.

14. Arbitrations under these rules shall be held in the rooms of the Chamber or at such other place as the arbitrators or umpire, as the case may be, may decide and shall be conducted in accordance with the statutory provisions for the time being in force relating to arbitration. The arbitrators or umpire, as the case may be, shall unless a different intention is expressed in the agreement, have power to—

(a) administer oath to the parties and witnesses appearing;

(b) state a special case for the opinion of court on any question of law involved or state the award, wholly or in part, in the form of a special case of such question for the opinion of the court;

- (c) make the award conditional in the alternative;
- (d) correct in an award any clerical mistake or error arising from any accidental slip or omission;
- (e) administer to any party to the arbitration such interrogatories as may, in the opinion of the arbitrators or umpire, be necessary.

15. The dispute will normally be decided on the written statements of the parties. Either party may, with his submission or rejoinder, as the case may be, give notice to the arbitrators that he wishes to produce oral evidence before the arbitrators and umpire, and in such case the arbitrators or umpire shall be bound to hear such evidence.

16. In any case of a formal hearing no party shall without the permission of the arbitrators or umpire as the case may be, be entitled to appear by counsel, attorney or other advocate or adviser, but the arbitrators or umpire, as the case may be, in their or his direction may require the parties with or without witness to attend before them or him or before any committee or sub-committee of the Chamber to be examined.

17. All applications which the parties desire to make to the arbitrators or umpire, and all notice to be given to the parties before or during the course of the arbitration, or otherwise in relation thereto, shall be made through the secretary who shall communicate the orders and directions of the arbitrators or umpire therein to the parties.

18. The parties to the reference and any witness on their behalf, shall, subject to the provisions of any law for the time being in force—

- (a) submit to be examined by the arbitrators or umpire on oath or affirmation in relation to the matters in dispute;
- (b) produce before the arbitrators or umpire all books, deeds, papers, accounts, writings and documents within their possession or power, respectively which may be required or called for by the arbitrators or umpire;
- (c) comply with the requirements of the arbitrators or umpire as to the production and selection of samples, and
- (d) generally do all other things, which during the proceedings on a reference, the arbitrators or umpire may require.

19. The arbitrators or umpire may proceed with the reference notwithstanding any failure to file written statement within due time and may also proceed with the reference in the absence of any or both of the parties who, after due notice, refuse or neglect to attend.

20. The arbitrators or umpire, as the case may be, may at their or his own instance at any time or time before making a final award, and at the expense of the parties consult, refer to, and act on and adopt the advice, recommendations or suggestions of any committee or sub-committee of the Chamber having or exercising special jurisdiction or powers relating to the particular industry, commodity, produce or branch of trade concerned in the reference or of any experts whether members or not, and may also, at the like expenses of the parties, consult and adopt the advice of solicitors or counsel upon any question of law, evidence, practice or produce arising in the course of the reference.

21. The arbitrators or umpire shall within four months after entering on the reference or on or before any later day to which they or he with the consent of all parties concerned in the proceedings, by any writing signed by them, may from time to time extend their or his time therefore, make their or his award in writing as circumstances admit in forms prescribed by the committee and shall sign it, and shall give notice in writing, through the secretary, of the making and signing thereof and of the fees and charges payable in respect of the arbitration and award.

22. Upon receipt of an award of the arbitrators or an umpire, as the case may be, the secretary shall countersign it in token of the Chamber's authentication thereof. He shall forthwith supply to each party a copy of the award but the names or name of the arbitrators or umpire shall not be disclosed on such copy and such non-disclosure shall not affect the validity of award.

23. If either party to the submission requests, within thirty days from the date of service of the notice of the making of the award, that the award be filed in court, and if the said party pay the cost and charges and the Chamber's fee for so filing the award the arbitrators or umpire shall cause the award or a signed copy thereof to be filed in court together with any deposition and documents which have been taken and proved before them or him and the opinion pronounced by the court on a special case submitted by them or him, if any, in accordance with sec. 14 of Act, by forwarding the same under a sealed cover addressed to the Prothonotary and Senior Master of the High Court or the Registrar of the City Civil Court, Bombay as the case may require with a letter requesting that the same be filed. They or he shall also send together with the award a copy of the notice given to the parties concerned and an affidavit of service of such notice and of attestation of their or his signature on the award.

24. The arbitrators or umpire shall also make an affidavit stating (1) the date on which the award was made and signed, (2) that all depositions

taken and documents proved before them or him have been forwarded to the court along with the award and (3) that no documents which came into their or his possession in the course of the arbitration proceeding have remained with them or him. Such affidavit shall be filed along with the award.

25. The parties shall in all things abide by and obey the award, which shall be binding on the parties and their respective representative notwithstanding the death of any party before or after the making of the award, and such death shall not operate as a revocation of the submission.

26. The fees payable to the Chamber in respect of any arbitration held under the foregoing by-laws shall be such as may be prescribed by the committee of the Chambers from time to time.

27. The arbitrators or umpire, as the case may be, shall direct in their award by whom the fees or any part thereof payable in respect of any arbitration held under these by-laws shall be paid.

28. Neither of the parties shall bring or prosecute any suit or proceeding whatever against the arbitrators or umpire or the Chamber or any of them for or in respect of the matters in dispute or any of them or of the arbitration nor any such suit or proceeding (save the enforcement of the award) against the other party.

29. All notices required by these rules to be given, shall be in writing and shall be sufficiently given if left at the last known place of abode or business of the party to whom the notice is addressed, or if sent by registered post addressed to him by name at such place of abode or business. If sent by post such notice shall be deemed to have been given at the time at which the letter would in the ordinary course be delivered. In the case of any person who has no place of business in Bombay but who is represented by an agent in Bombay or elsewhere in India, the place of abode or business of the agent shall be deemed that of such person.

30. Subject to any limitations imposed by the Schedule, the arbitrators or umpire as the case may be, shall be entitled to allow fees and expenses of witnesses, expenses connected with the selection and carriage of samples. Conveyance hire, cost of legal or technical advice or proceedings in respect of any matter arising out of the arbitration incurred by the arbitrators or umpire, as the case may be, and, when goods are examined at premises other than those of the Chamber, such additional fees not exceeding double the prescribed fees of any particular reference, for every attendance at such other premises, and any other incidental expenses and charges in connection with or arising out of the reference or award as the arbitrators or umpire, as the case may be, shall be in their or his absolute discretion think fit.

SCHEDULE

Scale of Fees

1. The following fees will be charged :

(a) A fee of Rs. 100 per hour for each arbitrator and umpire. The committee of the Chamber reserves the right to charge a higher fee for the arbitrators or umpire in respect of any complicated or lengthy arbitration.

(b) When one of both parties to the dispute is or are a member or members of the Chamber an additional fee of Rs. 100 will be charged for the Chamber's services.

or

(c) When neither party to the dispute is a member of the Chamber an additional fee of Rs. 150 will be charged for the Chamber's services.

(d) A further sum shall be paid to cover the cost of the stamp duty, according to the scale for the time being in force.

(e) A fee of Rs. 20 shall be paid to the Chamber, in addition to the court fees on the time being in force, in cases where an award is required to be filed.

2 A deposit of Rs. 1,000 against the cost of the arbitration shall be forwarded by each party with the application for arbitration. If the deposit exceeds the total charges for the arbitration the excess amount will be refunded. If the deposit is inadequate, the balance must be paid before delivery of the award.

3. In the event of the arbitration not being proceeded with, the fees deposited will, with the exception of the Chamber's fee, be refunded.

APPENDIX 5

Rules of Arbitration of the Indian Council of Arbitration in Force From 1st April, 1970

INTERPRETATION

1. In these Rules, the following words have the following meanings.
 - (i) "Council" means the Indian Council of Arbitration.
 - (ii) "Committee" means the Arbitration Committee of the Council as provided for hereinafter.
 - (iii) "Rules" means the Rules of Arbitration of the Council.
 - (iv) "Governing Body" means the Governing Body for the time being of the council.
 - (v) "Bench" means the arbitrator or arbitrators appointed for determining a particular dispute or difference.
 - (vi) "Panel" means the panel of arbitrators maintained by the Council.
 - (vii) "Court" means a civil court having jurisdiction to decide the question forming the subject-matter of the reference, if the same had been the subject-matter of a suit.
 - (viii) "Reference" means any agreement to refer a difference or dispute present or future to arbitration under the Rules of the council.
 - (ix) "Party" shall include any individual, firm, company, Government organisation or Government undertaking.
 - (x) "Secretary" means the Secretary for the time being of the council and includes such other person as the committee may nominate for carrying out the duties of the Secretary under these Rules.
 - (xi) Words importing the singular number include, where the singular number include, where the context admits or requires, the plural number and vice versa.

ARBITRATION COMMITTEE

- (a) The Governing Body of the council shall constitute an Arbitration Committee consisting of the President of the council, who shall be the ex officio chairman of the committee and three members of the Governing Body of the council selected by the Governing Body from amongst themselves. The Committee shall hold office for a year.
- (b) The committee may co-opt not more than two persons to be additional members of the committee during its term of office. Persons who are not members of the Governing Body may also be co-opted to be members of the Arbitration Committee.

RULES APPLICABLE

3. In every case where the arbitration clause of the council is used, Rules in force at the time of the conclusion of the contract shall govern the arbitration.

PANEL OF ARBITRATORS

4. A panel of arbitrators shall be appointed by the committee from amongst persons who are qualified and willing to serve as arbitrators generally or in specific fields and who are from time to time recommended by the members of the council or any other person or organisation.

5. The Secretary shall prepare and maintain an up-to-date panel of arbitrators together with adequate information as to their qualifications and experience. Separate lists may be kept and maintained of arbitrators included in the panel for disputes in general and for each of the fields of international trade and or business transactions in which the Governing Body decide that the council will offer arbitration facilities under the Rules. The parties to dispute or the Secretary where he appoints the arbitrator may choose any person from the panel with reference to any dispute. The panel of arbitrators shall be open to inspection by all persons with the permission of the Secretary.

6. The committee may at any time add the name of any person to the list of arbitrators included in the panel or delete the name of any person from the panel.

DUTIES OF SECRETARY

7. The Secretary shall receive applications for arbitration by the council, receive payment of fees and deposits, appoint as provided here-

inafter in consultation with the chairman of the committee and in his absence in consultation with the member of the Governing Body designated by him, an arbitrator or arbitrators as hereinafter provided, receive all communications made to the bench by the parties and communicate to them the orders and directions of, the bench, keep a register of applications to the council and of awards made by the bench, keep such other books or memoranda and make such other returns as the committee shall from time to time require and generally carry out the directions of any bench so constituted and take such other steps as may be necessary to assist any such bench in the execution of its functions.

INITIATION OF ARBITRATION

8. Any dispute or difference relating to any trade, business or manufacture including shipping, banking, insurance building construction and erection contracts, etc. arising between parties in India or a party in India and a party in a foreign country who agree or have agreed in writing to submit their disputes and differences for arbitration under the Rules of the council, shall be determined and settled in accordance with these Rules.

9. Any clause in a contract providing for the submission to arbitration under these Rules shall be construed and shall take effect as a submission subject to Indian jurisdiction in accordance with the laws of India and the parties to such contract or submission shall be deemed to have submitted to the jurisdiction of the courts in India.

10. In every case where a dispute or difference has arisen between parties who have agreed that such dispute or difference shall be referred to decision under these Rules, an application for arbitration together with such particulars as are desired may be addressed by either party or any of the parties to the Secretary. The party (applicant) applying for arbitration shall along with the application pay the registration fee and furnish to the Secretary, a statement containing :

- (a) the names in full of the parties to the disputes and their addresses,
- (b) full details of the applicants case,
- (c) original (or copies certified true by the applicant) of such documents and information relevant or relied upon.

REJOINDER TO THE CLAIM

11. (a) On receipt of the application together with the statement, the Secretary shall send to the other party (respondent) a copy of the

statement and attached documents and ask such other party to furnish within the date specified or within any extended date, a rejoinder setting out his case accompanied by all documents and information in support of or bearing on the matter,

(b) A copy of the rejoinder and all the appended documents, if any shall be sent to the applicant of information.

COUNTER CLAIM AND REPLY TO COUNTER CLAIM

12. (a) The respondent may make a counter-claim against the applicant provided the counter-claim arises under the same transaction as the original claim. He must do so within the period laid down for the rejoinder to the claim and the applicant may within twenty-one days of the notification of the counter-claim or within such extended time submit a statement in reply to the counter-claim. The Bench appointed to adjudicate upon the original claim shall also adjudicate upon the counter-claim.

(b) Copy of the reply of the applicant to the counter-claim and all appended documents, if any, shall be sent to the respondent for information.

13. Amendments of the claim, rejoinder, counter-claim or reply submitted to the Bench must be formulated in writing by the party so desiring. The Bench will decide whether such amendments should be allowed or not.

COPIES OF STATEMENTS, ETC.

14. All statements, replies and other documents and papers submitted by the parties and all appended documents must be supplied in triplicate. Where there is more than one arbitrator or more than one opposing party, the parties shall within the time specified furnish to the Secretary such number of further copies as may be required by the Secretary.

CONSTITUTION OF THE BENCH

15. On receipt of the application, the Secretary shall take necessary steps to have the Bench constituted for the adjudication of the dispute or difference as provided hereunder.

16. The number of arbitrators to hear a dispute shall be either one or three to be determined as under :

(a) Where the claim does not exceed Rs. 3 lakhs and where the arbitration agreement does not specify three arbitrators, the reference shall be deemed to be to a sole arbitrator, unless the

parties to the dispute agree to refer the dispute to three arbitrators within thirty days from the date of notification of the request for arbitration or within such extended time or the Secretary in his discretion thinks that an adjudication by three arbitrators is preferable in the particular case.

- (b) Where the claim exceeds Rs. 3 lakhs, the dispute will be heard and determined by three arbitrators, unless the parties to the dispute agree, to refer the dispute to a sole arbitrator within thirty days from the date of the notification of the request for arbitration or within such extended time.

17. The appointment of a sole arbitrator or three arbitrators shall be made in the following manner :

- (a) In case a sole arbitrator has to be appointed, the Secretary shall call upon the parties to the dispute to forward the name of an agreed arbitrator from among the panel of arbitrators by a notice in writing sent to them. The said notice shall specify the period within which the nomination shall be made which shall not be less than thirty days from the date of the said notice to the respective parties. If the parties fail to agree on the person to be appointed as sole arbitrator within the time granted by the Secretary, the Secretary shall in consultation with the Chairman of the committee and in his absence in consultation with the member of the Governing Body designated by the Chairman appoint the sole arbitrator from among the panel of arbitrators. If one of the parties is national or resident of a country other than India, the sole arbitrator shall as far as possible be chosen or appointed by the Secretary from among the nationals of a country other than that of any of the parties. The sole arbitrator so nominated shall constitute the bench to hear the dispute and shall be appointed as such in writing by the Secretary. The Secretary shall give notice to the parties of the constitution of the bench.
- (b) Where the reference is to three arbitrators, the Secretary shall in the first instance call upon the parties to the dispute to nominate one arbitrator each from among the panel of arbitrators by a notice in writing sent to them. The said notice shall specify the period within which the nomination shall be made which shall not be less than twenty-one days from the date of the said notice to the respective parties. If a party to the dispute refuses or neglects to appoint an arbitrator on his behalf within

the period specified or any extended period or if he requests the Secretary to nominate an arbitrator on his behalf the Secretary shall nominate an arbitrator on behalf of that party from among the persons then constituting the panel of arbitrators in consultation with the members of the Governing Body designated by the Chairman. On receipt of the nominations from the respective parties or on the appointment as aforesaid by the Secretary, the Secretary shall appoint another person from among the panel of arbitrators to be an additional arbitrator. If one of the parties is a national or resident of a country other than India, the additional arbitrator shall as far as possible be chosen or appointed from among the national of a country other than that or any of the parties. The arbitrators so nominated or shall constitute the Bench and shall be appointed as such in writing by the Secretary. The additional arbitrator nominated by the Secretary shall be Chairman of the bench. The Secretary shall give notice to the parties of the constitution of the bench.

18. The consent to act as arbitrator shall be obtained by the Secretary from the persons nominated by him or by the parties.

19. Before accepting his nomination, the prospective arbitrator shall disclose any circumstances likely to disqualify him as an impartial arbitrator. Upon receipt of such information the Secretary shall disclose it to the parties, who if willing to proceed under the circumstances disclosed, shall advise the Secretary accordingly.

If either party declines to waive the presumptive disqualification, the prospective arbitrator shall be disqualified from acting as arbitrator and the vacancy so created shall be filled in accordance with the applicable provisions of these Rules.

20. (a) If any appointed arbitrator neglects or refuses to act within twenty-one days or within such extended time of his being required to act or dies or becomes incapable of acting, the Secretary, in case he has appointed the arbitrator shall appoint another arbitrator in his place. Where the appointment is by the parties, the Secretary shall call upon the party who has appointed the arbitrator to nominate an arbitrator within twenty-one days of the date of the notice requiring the party to nominate an arbitrator or within such extended time or the party requests the Secretary to appoint an arbitrator on his behalf, the Secretary shall nominate an arbitrator on behalf of that party from among the panel of arbitrators then constituting the panel of arbitrators in consultation with the chairman of the committee or a member of the Governing Body designated by the

chairman. The decision of the Arbitration Committee that an appointed arbitrator has become incapable of acting shall be final and conclusive for the purposes of this Rule.

(b) The bench as reconstituted shall proceed with the arbitration with liberty to act on the record of proceedings as then existing and on the evidence, if any, then taken in the arbitration or commence proceedings *do novo*.

NOTIFICATION AND/OR COMMUNICATIONS FROM THE SECRETARY

21. All applications which the parties desire to make to the Bench and all notices to be given to the parties before or during the course of arbitration or otherwise in relation thereto shall be made through and sent by the Secretary who shall communicate the orders and directions of the Bench thereon to the parties.

22. All such or other notification and communications shall be deemed to have been well and duly made if delivered by hand against acknowledgement or sent registered post to the addresses given by the parties.

SUBMISSION OF THE CASE TO THE BENCH

23. The Secretary shall send copies of all applications, rejoinders counter-claims, replies, statements, documents, etc., received from the parties to the dispute to the arbitrator/arbitrators constituting the Bench under Rule 17 with a request to proceed with the arbitration and the Bench shall be deemed to have entered on the reference on the day on which such applications, rejoinders, counter-claims, replies, documents, etc., have been despatched to the arbitrator/arbitrators. Intimation shall be given to the parties of the day on which the Bench is deemed to have entered on the reference.

PLACE OF ARBITRATION

24. Arbitration proceedings shall be held at such place in India as the Bench may determine.

HEARING BY THE BENCH

25. A dispute will normally be decided by the Bench on the written statements of the parties and the documents accompanying them unless one of the parties requests a hearing. The Bench shall power, however, to call for any further documents or things and if it thinks fit, require a hearing of the reference and take any oral evidence if necessary. The Secretary shall intimate to the parties the time and place for the hearing.

26. At a hearing, a party shall be entitled to appear by counsel, attorney, advocate, or a duly authorised adviser or representative or personally.

27. The Bench may proceed with the reference notwithstanding any failure by a party or parties to comply with any of the directions of the Bench and may also proceed with the reference in the absence of any or both the parties, who fail or neglect to attend at the time and place appointed by the Bench.

28. The parties shall do all acts necessary to enable the Bench to make an award and shall not do or cause or allow to be done any act to delay or to prevent the Bench from making an award, and if any party shall do or cause or allow to be done any such act, that party shall pay the other party such costs as the Bench may deem reasonable.

EFFECT OF ARBITRAL AGREEMENT

29. If the parties have agreed to submit their case to arbitration under these Rules, and any party refuses or fails to take part in the arbitration proceedings, the Bench may proceed with the arbitration notwithstanding such refusal or absence.

30. Where a party wishes to have any question arising in any proceedings before the Bench referred to the opinion of the court in the form of a special case, he shall apply in writing to the secretary. If the Bench decides to accede to such request, the party applying shall also be responsible for all legal and other costs, charges and expenses that may be incurred by the Bench in respect of and incidental to the same and shall make such deposit on account thereof and within such time as the Bench may direct. In case of default in making the deposit as above, the reference shall not be made to the court or if made shall be withdrawn by the Bench and the arbitration proceeded with as if there has been no reference to the court.

RULES GOVERNING THE PROCEEDINGS

31. The Bench may at its discretion at any time or times before making the final award and at the expense of the parties concerned consult any person having special knowledge relating to the particular industry, commodity, produce or branch of trade concerned in the reference or any expert or qualified accountant and may also at the like expense of the parties, consult solicitors, counsel or advocates upon any technical question of law, evidence, practice or procedure arising in the course of the reference. If the parties agree, the Bench may at the expense of the parties appoint any expert, accountant, or lawyer to sit with them as an assessor and take into account the advice of such assessor.

32. The parties to the reference and any witnesses on their behalf shall, subject to the provisions of any law for the time being in force.

- (a) submit to the examined by the Bench on oath or affirmation in relation to the matters in dispute;
- (b) produce before the Bench all books, deeds, papers accounts, writings and documents in their possession or power respectively which may be required or called for by the Bench.
- (c) comply with the requirements of the Bench as to the production or selection of sample; and
- (d) generally do all other things which during the pendency of the reference the Bench may require.

33. The Bench may receive and consider the evidence of witnesses by affidavit, but shall give it only such weight as the Bench seems it entitled to after consideration of any objections made to their admission.

34. The Bench may;

- (a) administer oath or affirmation to the parties or witnesses appearing and giving evidence;
- (b) state a special case for the opinion of the court or give its award in the form of a special case for the opinion of the court.
- (c) make any award conditional or in the alternative;
- (d) correct in any award any clerical mistake or error arising from or incidental to any slip or omission;
- (e) administer to the parties to the arbitration such interrogatories as it may consider necessary.

35. Where there are two or more applications for arbitration pending with the same Bench and the contesting parties are the same and the issues involved in the disputes arise out of the same or similar transactions, the Bench may, if it thinks proper to do so and with the consent of the parties, order the hearings of the disputes to be held jointly. The awards, however, shall be given separately in each case.

36. (i) The Bench may be the award dismiss the application or claim :

- (a) if the applicant does not prosecute the arbitration proceedings or file the papers within the time granted,
- (b) or neglects or refuses to pay the dues or deposits ordered to be paid by the Bench or the secretary,

- (ii) The Bench may make an *ex parte* award:
 - (a) if the respondent neglects or refuses to appear or make his defence or fails to file the papers within the time granted,
 - (b) or neglects or refuses to pay the dues or deposits ordered to be paid by the Bench or the secretary.

STENOGRAPHIC RECORD

37. The secretary shall make the necessary arrangements for the taking of a stenographic record of evidence whenever such record is required by a party. The cost of the stenographic record and all transcripts thereof if any, shall form part of the costs of the reference.

INTERPRETER

38. The secretary shall make the necessary arrangements for the services of an interpreter upon the request of one or more of the parties and the costs thereof shall form part of the costs of the reference.

CONSERVATION OF PROPERTY

39. The Bench may issue such orders as may be deemed necessary to safeguard the property which is the subject-matter of the arbitration without prejudice to the right of the parties or the final determination of the dispute.

WAIVER OF RULES

40. Any party who proceeds with the arbitration with the knowledge that any provision or requirement of these Rules has not been complied with and who fails to state his objection thereto in writing, shall be deemed to have waived his right to object.

RETURN OF DOCUMENTS

41. Unless required to be filed in a Court of Law, the Bench shall have full discretion to retain and/or to return all books, documents or papers produced before it and may direct at any time that the books, documents or papers, produced before it or any of them may be returned to the parties producing them on such terms and conditions as the Bench may impose.

AWARDS

42. No award shall be made by the Bench unless the case of the party applying for arbitration has been brought to the notice of the other party and until after the lapse of specified time within which he has been asked to submit his rejoinder under Rule 11.

43. Whenever there is more than one arbitrator, the award of the majority shall prevail and be taken as the decision of the Bench. Failing a majority, the Chairman of the Bench alone shall make the award.

44. Should the parties reach an agreement before the Bench, it shall be recorded in the form of an arbitral award made by consent of the parties.

45. The Bench shall make its award in writing within four months after entering on the reference or within such extended time as the parties may agree upon or the court may allow.

46. The Bench may make an interim award, and may by an award, determine and order what shall be done by either or any of the parties, respecting the matters referred.

47. The arbitrators constituting the Bench or the Chairman where Rule 43 is applicable, shall sign the award and the secretary shall give notice in writing to the parties of the making and signing thereof and of the amount of fees and charges payable in respect of the arbitration and the award.

48. (a) When an award has been made, the secretary shall furnish a true copy of the award to the parties by registered post provided the arbitration costs have been fully paid to the council by the parties or by one of them.

(b) The secretary may require either party to notify him to compliance with the award.

49. Additional copies of the award certified true by the secretary shall be made available to the parties but to no one else, at all time on request and on payment as fixed by the secretary.

50. A party shall in all things abide by and obey the award, which shall be binding on the parties and their respective representatives, notwithstanding the death of any party before or after the making of the award and such death shall not operate as the revocation of the submission or reference.

FILING OF AWARD

51. The Bench shall at the request of any of the parties to the proceedings or of any person claiming under a party or if so directed by the court and upon payment of fees and charges due in respect of the arbitration and award and of the costs and charges of filing the award, cause the award or a signed copy thereof together with the deposition or documents which may have been taken and proved before it to be filed before the court.

DEPOSITS

52. The secretary may require the parties or any one of them before passing the case on to the arbitrators under Rule 23 to deposit in advance such sums of money as he deems necessary to defray the expenses of the arbitration including the administrative charges and arbitrator's fees. The Bench may during the course of the arbitration proceedings, if necessary, require further sums to be deposited by the parties or any of them to meet the expenses of the arbitration. In particular, when the respondent neglects or refuses to make the deposit, the Bench may require such deposit to be paid by the applicant himself. The deposits made shall be taken into account by the Bench in apportioning the costs while making the award.

FEES AND EXPENSES

53. The Bench shall be entitled to allow fees and expenses of witnesses, expenses connected with the selection and carriage of sample and examination of sample and examination of goods, licenced measurers department charges, conveyance, hire, cost of legal or technical advice or proceedings in respect of any matter arising out of the arbitration incurred by the Bench and any other incidental expenses and charges in connection with or arising out of the reference or award as the Bench shall in its absolute discretion think fit.

54. The costs of the reference and the award including charges, fees and other expenses shall be in the discretion of the Bench, which may direct to and by whom, and in what manner and in what proportion such charges, fees and other expenses or any part thereof shall be borne and paid, and may settle the amount of costs to be so paid or any party thereof and may award costs to be paid as between solicitor and client. In the event any administrative fees and expenses are due to the council, the Bench may award them in favour of the council.

55. The fees, costs and expenses incidental to the reference and the award shall include the following :

(1) *Registration Fee.*—A registration fee of Rs. 100 shall be paid along with the application for reference. The registration fee will not be returned and becomes the property of the council.

(2) *Administrative Fee.*—The administrative fee will be fixed by the Bench in case within the limits given hereunder having regard to the nature of the case and the time taken to decide it.

Where the amount of claim is :

Up to Rs. 20,000	Rs. 100 to Rs. 300
From Rs. 20,201 to Rs. 50,000	Rs. 200 to Rs. 500
From Rs. 50,001 to Rs. 1,00,000	Rs. 300 to Rs. 700
From Rs. 1,00,001 to Rs. 5,00,000	Rs. 500 to Rs. 1,500
From Rs. 5,00,001 to Rs. 10,00,000	Rs. 1,000 to Rs. 3,000
From Rs. 10,00,001 to Rs. 25,00,000	Rs. 2,000 to Rs. 5,000
From Rs. 25,00,001 to Rs. 50,00,000	Rs. 3,500 to Rs. 7,500
From Rs. 50,00,001 to Rs. 1,00,00,000	Rs. 6,000 to Rs. 10,000
Over Rs. 1,00,00,000	Such amount exceeding Rs. 7,500 as may be fixed by the Bench in each case.

(3) *Arbitrator's fees.*—The arbitrator's fee will be fixed by the Bench in each with the limits given hereunder having regard to the nature of the case and the time taken to decide it. For each arbitrator, where the amount of claim is :

Up to Rs. 20,000	Rs. 100 to Rs. 300
From Rs. 20,2001 to Rs. 50,000	Rs. 200 to Rs. 500
From Rs. 50,0001 to Rs. 1,00,000	Rs. 300 to Rs. 700
From Rs. 1,00,001 to Rs. 5,00,000	Rs. 500 to Rs. 1,500
From Rs. 5,00,001 to Rs. 10,00,000	Rs. 1,000 to Rs. 3,000
From Rs. 10,00,001 to Rs. 25,00,000	Rs. 2,000 to Rs. 5,000
From Rs. 25,00,001 to Rs. 50,00,000	Rs. 3,500 to Rs. 7,500
From Rs. 50,00,001 to Rs. 1,00,00,000	Rs. 6,000 to Rs. 10,000
From Rs. 1,00,00,000	Such amount exceeding Rs. 7,500 as may be fixed by the Bench in each case.

56. The amount of the claim shall be stated in the application by the party applying for arbitration. If the amount is stated in a currency other than the rupee, it shall be converted into rupees, at the current official rate of exchange.

57. Where the sum under dispute is not stated or in arbitration proceedings where the relief claimed is other than a money claim, viz., a dec-

laratory claim, the secretary and the Bench under Rule 52, may require such deposits as may be deemed necessary to be payable by such of the parties as may be required subject to later adjustment.

58. The provisions relating to fees, costs and expenses in sub-rules (2) and (3) of Rule 55 above in relation to a claim will apply also to the amount of counter-claim and the secretary and the Bench, under Rule 52, may require deposits as may be deemed necessary in respect of the counter claim to be payable from such of the parties as may be required subject to later adjustment.

59. Other expenses.—In addition to the above fees and expenses, any travelling expenses incurred by the arbitrator or the secretary shall be included in the arbitration costs and shall be payable as determined by the Bench.

60. An arbitrator who has to travel shall be paid travelling expenses by air or rail (air conditioned wherever available) or car when neither air nor rail transport is available at actuals. In addition, he shall be paid out pocket expenses of Rs. 100 for each day of stay for purposes of the arbitration.

STAMP DUTIES

61. Stamp duties are to be paid in all cases in accordance with the scale of stamp duties for the time being imposed by law.

FILING OF AWARDS

62. A fee of Rs. 50 to the council in addition to the court fees, on the scale for the time being in force is payable by the party requiring the award to be filed.

COPIES OF PROCEEDINGS

63. No party is entitled as of right to copies of proceedings before the Bench. In case the secretary is required to furnish copies of depositions and/or documents which have been taken or proved before the arbitrator, a charge as demanded by the secretary shall be paid by the party requiring such copies.

64. The secretary shall, upon the written request of a party, furnish to such party at his expense certified facsimiles of any documents filed in the arbitration proceedings.

CASES WITHDRAWN

65. Where the party instituting a case desires to withdraw it before

a Bench has been constituted, the secretary shall return to him and deposits made by him, under Rule 52 after deducting such charges as he might have incurred in connection with the case. The registration fee, however, shall not be refundable.

INDEMNITY OF ARBITRATORS

66. No party shall bring or prosecute any suit or proceedings whatever against the Bench, or any member thereof, for or in respect of any matter or thing purporting to be done under these Rules nor any suit or proceeding in respect thereof (save for enforcement of the award) against the other party.

AMENDMENT OF RULES

67. The Governing Body may revise, amend or alter these Rules or the schedule of fees and other monies to be charged and paid as and when they think necessary.

APPENDIX 6

**Specimen of usual Arbitration Clause in a
partnership deed :**

All disputes and questions in connection with the partnership or this deed arising between the partners or between any one of them and the legal representatives of the other or others or between their respective legal representatives and whether during or after the partnership shall be referred to the arbitration of two arbitrators one to be appointed by each party and in case of their disagreement to an umpire appointed by the said arbitrators or in case of their default by the parties.

APPENDIX 7

**Specimen Arbitration Clause in contract relating to
P. W. D.**

If at any time during the progress of the works or after completion or the alleged completion thereof and at any time during the continuance of this agreement any dispute or differences arise between the parties hereto in relation to or in connection with this agreement, the same shall be referred to the arbitration of Sri _____ as the sole arbitrator or to two arbitrators one to be appointed by each party and the provisions of the Indian Arbitration Act, 1940, shall apply. The decision so given shall be final and binding upon the parties.

APPENDIX '8'

**Specimen Arbitration Clause (38, 38A) in contracts
with the Electricity Department (Form A)**

(38) If any dispute, difference or controversy at any time arise between the Contractor on the one hand and the U.P. Electricity Board and the Engineer of the Contract on the touching the contract, or as to the true construction, meaning and intent of any part or condition of the same, or as to the manner of execution or as to the quality or description of, or payment for the same or as to the true intent, meaning, interpretation, construction or effect of the clauses of the contract specification or drawings or any of them, or as to any things to be done, omitted or suffered in pursuance of the contract or specifications, or as to the mode of carrying the contract into effect, or as to the breach or alleged breach of the contract or as to any claim on account of such breach or alleged breach or as to obviating or compensating for the commission of any such breach, or as to any other matter or thing whatsoever connected with or arising out of the contract, and whether before or during the progress of or after the completion of the contract, such question, difference or dispute shall be referred for adjudication to the Chairman, U.P. State Electricity Board or to any other person nominated by him in this behalf and his decision in writing shall be final, binding and conclusive. This submission shall be deemed to be a submission to arbitration within the meaning of the Indian Arbitration Act, 1940, or any statutory modification thereof. The arbitrators may from time to time with consent of the parties, enlarge the time for making and publishing the award.

Upon every or any such reference, the costs of an incidental to the reference and award respectively shall be in the discretion of the arbitrator, who shall be competent to determine the amount thereof or direct the same or be taxed as between solicitor and client or as between party and party and direct by whom and to whom and in what manner the same shall be borne and paid.

Work under the contract shall, if reasonably possible, continue during the arbitration proceedings and no payment due or payable by the Board shall be withheld on account of such proceedings.

(38)-A). Any action taken or proceedings initiated on any of the terms of this agreement shall be only in the court of competent Jurisdiction under the High Court of Judicature at Allahabad.

Work under the Contract shall if reasonably possible, continue during the Arbitration proceedings, and no payments due or payable by the purchaser shall be withheld on account of such proceedings.

APPENDIX '9'

In the Court of Civil Judge, Allahabad

(Title of case)

Application for Appointment of an Arbitrator

Section 8 (i) (a)

1. By an agreement executed by the parties on the 23rd January, 1990 the applicant agreed to sell to the opposite party from time to time such quantity of coal as the opposite party wanted to purchase on the terms and conditions embodied in the said agreement.

2. Clause 10 of the said agreement provided that if any difference arose between the parties regarding any transaction of sale of coal made under the said agreement, it shall be decided by arbitrator.

3. Now that several differences have arisen regarding several transactions of sale made by the applicant under the aforesaid agreement.

4. The applicant asked the opposite party to concur in the appointment of an arbitrator for settlement of the aforesaid differences but the opposite party always puts him off and never agreed to the appointment of an arbitrator.

5. On the 18th Dec. 1990, the applicant sent a notice by registered post calling upon the opposite party to concur in the appointment of an arbitrator for settlement of the aforesaid difference under clause 10 of the said agreement and the said notice was served on the opposite party on the 20th Dec. 1990, and thus one month clear has pass but the opposite party has not sent to the applicant any reply nor has he appointed or concurred in the appointment of an arbitrator.

The applicant, therefore, prays that the court will be pleased to appoint an arbitrator for settlement of the aforesaid differences between the parties.

Applicant.

APPENDIX '10'

In the Court of Civil Judge, Allahabad

Order of Reference

(Title of Suit)

Upon reading the application presented on the _____ day of _____ 19____
it is ordered that the following matter in difference arising in this suit, namely:

_____ be referred for determination to A and B, or in case of their not agreeing then to the determination of C, who is hereby appointed to be umpire; and such arbitrators are to make their award in writing on or before the _____ day of _____ 19____, and in case of said arbitrators not agreeing in an award the said umpire is to make his award in writing within _____ months after the time during which it is within the power of the arbitrators to make an award shall have ceased.

Given under my hand and seal of the Court, this _____ day of _____ 19____.

Judge.

APPENDIX '11'

In the Court of Civil Judge, Allahabad.

(Title of case)

Application for Substitution of an Arbitrator

Section 8 (i) (b)

1. By a deed of agreement of reference dated 10th November, 1990 the parties appointed A, B and C arbitrators for making a partition of joint family property of the parties.

2. The arbitrators entered on the arbitration on the 21st November, 1990, but before they could complete the arbitration, arbitrator A died on the 2nd January, 1991 (or, arbitrator A, by a notice sent by him to the applicant on the 20th November, 1990, intimated his unwillingness to act as an arbitrator), (or, arbitrator A has on the 2nd December, 1990, been convicted of a criminal offence and sentenced to seven years rigorous imprisonment and has thus become incapable of acting as an arbitrator), (or, arbitrator A ceased to attend arbitration proceeding and to proceed with the reference, though requested by the applicant and by other arbitrators several times to do so, the last of such request was made by the applicant by means of a registered notice served by post on the _____).

3. On the _____, the applicant sent by registered post a notice calling upon the opposite party to concur in the appointment of another arbitrator in place of the said A, and the said notice was served on him on the _____ but though more than one month have passed the opposite party has not done so.

The applicant, therefore, prays that the court will be pleased to appoint another arbitrator in place of A.

Applicant

APPENDIX '12'

In the Court of Civil Judge, Allahabad.

(Title of case)

Application for Appontment of an Umpire

Section 8 (i) (c)

1. By a deed of agreement dated 10th November, 1990, the parties referred certain disputes between them to the arbitration of A and B.

2. By clause 10 of the said deed it was provided that in case of disagreement between the arbitrators, the latter should appoint an umpire.

3. By a notice sent by registered post and served on the said arbitrators on the 28th December 1990 the applicant called on them to appoint an umpire but they have not yet done so.

The applicant, therefore, prays that the court will be pleased to appoint an umpire.

Applicant.

APPENDIX '13'

In the Court of Civil, Judge, Allahabad

Order for Appointment of new Arbitrator

(Title of Suit)

Whereas by an order, dated the day of 19 (state order of reference and death, refusal etc., of arbitrator), it is by consent ordered that A be appointed in the place of B deceased (or as the case may be) to act as arbitrator with Y, the surviving arbitrator, under the said order, and it is ordered that the award of the said arbitrators be made on or before the day of 19 .

Given under my hand and seal of the Court, this day of 19 .

Judge.

APPENDIX-14

In the Court of Civil Judge, at Allahabad.

AB (Name, description and address)

_____ Applicant

Vs

CD (Name, description and address)

_____ Respondent

Application under section 5 of the Arbitration Act, 1940.

The humble petition of the petitioner above-named most respectfully.

Showeth : ?

1. That a dispute in connection with touching the agreement between the parties herein made on _____ on arose and the same has been referred to the arbitration of Mr. _____ by nomination of the respondent as per arbitration clause.

2. That the said Arbitrator has entered upon the reference on _____

3. That the said Arbitrator has miscondacted himself and his authority should be revoked on the followiug amongst other,

Grounds

I

II (State the Gruonds)

III

IV

4. That your petitioner apprehends that unless the authority of the said arbitrator is revoked immdiately, your petitioner will suffer irreparable loss and injury.

5. This application is made for the ends of justice.

It is therefore preyed that this Hon'ble Court be pleased to pass :—

(a) Order revoking the authority of Mr. _____ arbitrator.

(b) Any other or further order as your honour may deem fit and proper.

Date. _____

_____ Applicant

APPENDIX-15

Application under section 13 (b) for stating a special case

In the Court of Civil Judge, at Allahabad

Arbitration Case No. _____ of _____

In the matter of section 13 (b) of the Arbitration Act. 1940.

In the matter of arbitration

Between

AB (Name, description and address)

_____ First Party.

and

CD (Name, description and address)

_____ Second Party.

I, Sri _____ the arbitrator appointed in the aforesaid arbitration case, do hereby state the following special case for the opinion of the Learned Court :

1. (State in brief the fact of the case).
2. The questions of law for opinion of the court are :

(a) Whether _____

(b) Whether _____

3. A copy of the arbitration agreement dated _____ is also annexed herewith.

Dated, the _____ day
of _____ 19 _____

Arbitrator

APPENDIX '16'

Notice under Section 14 (3) of the Arbitration Act, 1940

In the Court of Civil Judge, Allahabad.

(Title of case)

Take notice that the _____ arbitrators have
_____ stated for the opinion of the
umpire has

Court a special case, copy whereof is here to annexed and that the Court a
special case, copy whereof is hereto annexed and that the Court will proceed
to pronounce its opinion thereon on the _____ day of _____ 19_____

Dated this _____ day of _____ 19_____

Sd. Civil Judge.

APPENDIX '17'

**Application for Removal of Arbitrator, on Ground of Neglect
In the Court of Civil Judge, Allahabad**

(Title of case)

Section 11 (i) (ss)

1. By a deed of agreement dated 10th November, 1990, the parties referred certain disputes between them to the arbitration of A.

2. The said arbitrator did not enter on the reference for a long time though requested several times to do so and the applicant served a notice on him by registered post on the 18th March 1991 calling upon him to enter on and proceed with the reference but though more than four months have expired he has neglected to do so.

(Or, the said arbitrator entered on the reference on the 15th December 1990 and examined the parties but has done nothing further although he fixed several dates for hearing and the parties were ready with their evidence and account books, always postponing the case for one reason or another, which were all equally inadequate. The said arbitrator has thus failed to use reasonable dispatch in proceeding with the reference.)

(Or, the said arbitrator has refused to take evidence of the petitioner).

For the above reasons the applicant prays that the said arbitrator be removed and that he shall not be entitled to any remuneration in respect of his services.

Applicant.

APPENDIX '18'

In the Court of Civil Judge, Allahabad.

(Title of case)

Application for Removal of Arbitrator, on Ground of Misconduct

(Section 11 (2) (t))

1. By a deed of agreement dated the 10th November, 1990, the parties referred certain difference between them to the arbitration of A.

2. After the said reference, the said arbitrator accepted employment under the opposite party as his manager and has thus become biased and partial to him (or, has taken a loan of Rs. 80, 000 from the opposite party), (or, after the reference, has entered into an agreement with the opposite party to give award on his favour in consideration of the latter giving to him a 1/3rd share in the property in dispute) and has thus misconducted himself.

Or, 2. The said arbitrator has misconducted the arbitration proceedings by doing the several acts, particulars of which are giving below :

Particulars of Acts of Misconduct

The applicant prays that the court will be pleased to remove the said arbitrator and appoint another arbitrator in his place or order that the arbitration agreement shall cease to have affect with respect to the differences referred to.

Applicant

APPENDIX '19'

In Court of the Civil Judge, Allahabad

AB (Name, description and address)

_____ Applicant

Vs

CD (Name, description and address)

_____ Opposite party.

Application under section 12 of the Arbitration Act, 1940.

The humble petition of the applicant
above-named most respectfully,

Showeth :

1. That under the arbitration agreement dated _____ the parties hereto have referred their disputes and differences arising out of the contract containing the arbitration clause and/or agreement to Mr _____ of _____ on or about _____

2. In pursuance of the said reference the said arbitrator had entered upon the reference on _____

3. That the petitioner has discovered after the said reference that the said arbitrator is a relation of the respondent and he is likely to take side with the respondent.

4. This Court has jurisdiction over the subject-matter of the dispute, It is therefore prayed that the said arbitrator be removed and his authority be revoked.

Date _____

_____ Applicant

APPENDIX '20'

Specimen of Award

(Title of Suit)

In the matter of an arbitration between A of _____ and B of _____

Where as in pursuance of an order of reference dated 20.11.90 made by the Court of Civil Judge, Allahabad the following matter in difference between A and B namely—

has been referred to us for determination.

Now, we, having duly considered the matter referred to us, to hereby make our award as follows :

We award _____

(1) that _____

(2) that _____

Dated the day of 19 _____

X

Y

Arbitrators.

APPENDIX '21'

In the Court of Civil Judge, Allahabad

(Title of case)

Application for filing an award

(Section 14 (2) (u))

1. On the 14th day of February, 1984, the applicant and the opposite party having a difference between them, concerning the partition of their family property, agreed in writing to submit the said difference to the arbitration A.

2. The said A entered upon the arbitration and made an award in writing on 20th February, 1990.

3. The said arbitrator was requested by the applicant to file in court the award or a signed copy of it with depositions taken by him and documents proved before him but he has not complied with the request

4. The applicant is prepared to pay the fees and charges due in respect of the arbitration and award and the costs and charges of filing the award and other papers.

The applicant prays that the said arbitrator be directed to file in court the award with full record of depositions and all the documents proved before him by the parties, and upon his filing the same, further proceedings be taken according to law.

Applicant.

APPENDIX '22'

Notice under Section 14(2) of the Arbitration Act, 1940

In the Court of Civil Judge, Allahabad

(Title of case)

Take notice that the Award of the Arbitrator appointed in the matter

_____ of above Arbitration Agreement has this day been filed and that the Court

Suit

will proceed to pronounce judgment on such Award on the day _____ of _____ 19____

Dated this _____ day of _____ 19____

Sd. Civil Judge

APPENDIX '23'

In the Court of Civil Judge, Allahabad

(Title of case)

Application to Modify an Award section 15

1. The parties referred their dispute to the arbitration of A, who made his award and filed it in this court and the court has issued a notice of filing the said award to the applicant.

2. The applicant submits that the award is defective in the following respects.

(a) The question of any maintenance allowance being paid by the applicant to his step-son B was not referred to the arbitrator and therefore, the portion of the award directing applicant to pay Rs. 250 p.m., as maintenance to B is invalid ;

(b) It is stated in the award that the applicant is entitled to get a sum of Rs. 20,000 from the opposite party but the award is imperfect in so far as it does not specifically direct that the opposite party should pay that sum to the applicant ;

(c) It is stated in para 8 of the award that the applicant's share in the grove is 1/4th and in house 1/3rd but in the last paragraph the arbitrator has awarded to the applicant a 1/3rd share in the grove and 1/4th share in the house which is an error arising from an accidental slip.

(d) The applicant's half share in a shop has been recognized by the arbitrator in para 19 of the award but by an accidental omission this has not been mentioned in the last para, where the final award has been made.

The applicant, therefore, prays that the aforesaid defects in the award be removed by suitably modifying or correcting the same.

Applicant

APPENDIX '24'

In the Court of Civil Judge, Allahabad

(Title of case)

Application for Remitting an Award (section 16)

1. Same as in the previous precedent.

2. In para 8 of the agreement of reference dated _____ the parties had also referred to arbitration, the question of the applicant's right of way to the well through the grounds of house No. 4, but the award has left this matter undetermined.

3. There was no dispute about house No. 4 which was in possession of the applicant and the question of partition of houses Nos. 1, 2 and 3 only was referred to arbitration but the arbitrator has partitioned all the four houses by putting them in one hotch-potch, and the award about houses Nos. 1 and 2 is not separable from that house no. 3.

4. The award is indefinite in so far as it directs that the opposite party should give possession of House No. 1 to the applicant whenever he can conveniently shift to another house.

5. The award is illegal on the face of it in so far as it had awarded to the opposite party against the applicant, a sum of Rs. 1500 on account of a contract which on the arbitrator's own finding was illegal and therefore void

The applicant prays that the said award be remitted to the arbitrator for reconsideration within such time as the court may fix.

Applicant

APPENDIX '25'

In the Court of Civil Judge at Allahabad

AB (Name, description and address)

_____Plaintiff/Petitioner

Vs.

(C. D. Name, description and address)

_____Defendant/Respondent

Petition under Section 20 of the Arbitration Act, 1940.

1. Plaintiff/Petitioner states :

1. That the parties hereto entered into a contract containing arbitration clause on or about_____. A copy of the contract with arbitration clause is annexed hereto and marked with letter 'A'.

2. In discharging the duties and obligations under the said contract by the plaintiff the following disputes and differences have arisen between the parties hereto.

(i) _____

(ii) _____

(iii) _____

(iv) _____

3. That the plaintiff has served a notice on the defendant to appoint the arbitrator in terms of arbitration clause, but has failed and/or neglected to do so. A copy of the said notice is annexed hereto and marked with letter 'B'.

4. That the plaintiff has not instituted any suit with respect to the subject-matter of the said agreement or any part of it.

5. That the plaintiff has not also initiated any proceeding under Chapter II of the Arbitration Act, 1940.

6. This court has jurisdiction over the subject-matter of this suit.

7. That it is just and expedient that the arbitration agreement be filed in this court.

The plaintiff therefore prays that the arbitration agreement dated _____ be ordered to be filed in this court and order of reference be made to the arbitrator in terms of the agreement or to an arbitrator appointed by this court.

Dated _____

_____Applicant

APPENDIX '26'

In the Court of Civil Judge, Allahabad

Notice under section 20 (3) of the Arbitration Act, 1940

Suit No. _____ of 1990

A _____ Vs. B _____

To :

B _____

The defendant above named, _____ where as the plaintiff above named has on the _____ day of _____ 19 _____ made an application which has been numbered and registered as Suit No. _____ of _____ 19 _____ for an order that the arbitration agreement dated the day of _____ 19 _____ and entered into an between the plaintiff and you, (the defendant) be filed. You are hereby required under sub-section (3) of section 20 of the Arbitration Act. 1940, being served with this notice, to appear before the Court on the _____ day of _____ 19 _____ at _____ o, _____ clock in the forenoon to show cause why the said agreement should not be filed.

Dated _____ 19 _____

Sd. Civil Judge.

APPENDIX '27'

Order of reference under section 20 (4) and 23 (1) of the
Arbitration Act, 1940.

In the Court of Civil Judge, Allahabad

In the matter of the Arbitration Act, 1940

and

In the matter of an Arbitration Agreement dated

the _____ day _____ 19 _____

Between

A. B. (state name, description and place of residence)

and

C. D. (state name, description and place of residence)

or

In the Matter of Suit No _____ of _____ 19 _____

Upon reading the petition of _____ verified by an
affidavit of _____ affirmed on the _____ day of _____ 19 _____ and filed
on the _____ day of _____ 19 _____, and a notice dated the _____ day of _____ 19 _____,
issued upon the filing of the said petition and an affidavit of _____ of
the due service thereof on the _____ day _____ 19 _____, both filed on the
day of _____ 19 _____, and the arbitration agreement dated the _____ day
of _____ 19 _____, entered into by and between the plaintiff and the
defendant. And upon hearing _____ counsel for the plaintiff and _____
counsel for the defendant it is ordered that the said agreement be filed.
And it is further ordered that the following matters in,

namely

difference _____ arising

specified in the said agreement

in this suit.

(State matters in difference).

be referred for determination to X and Y, or in case of difference of opinion
between them to the determination of Z, who is hereby appointed to be
umpire. And it is further ordered that the said arbitrators shall make and submit
their award in writing together with all proceedings and deposition recorded

and exhibits filed before them on or before the day of 19 , and in case of difference of opinions between the said arbitrators as the award they shall forthwith give notice of such difference to the said umpire who shall make and submit his award in writing together with all proceedings and depositions recorded and exhibits filed before him within the day of 19 . And the parties are to be at liberty to apply from time to time as they may have occasion.

Witness, etc.

Sd. Civil Judge.

APPENDIX '28'

In the Court of Civil Judge at Allahabad.

Suit No _____ of _____

A B (Name, description and address)

_____ plaintiff

Vs

C D (Name, description and address)

_____ Defendant

Application under section 21 of the Arbitration Act, 1940.

The petition of the plaintiff and the defendant
above-named most respectfully,

Showeth :

1. That all the parties above-named interested in the suit have agreed on _____ that all the matters in difference between them in the suit be referred to arbitration of _____ whose decision shall be final and binding on them.

2. The matters in difference between the parties are as follows :

(a)

(b) (State the difference or issues involved).

(c)

(d)

The petitioners therefore pray for an order that the above matters of differences be referred to the said arbitrator for his decision within such time as the Court shall deem fit and proper.

Date _____

_____ Applicant

APPENDIX '29'

In the Court of Civil Judge at Allahabad

AB (Name, description and address)

_____Petitioner

Vs.

CD (Name, description and address)

_____Respondent

Application under Section 28 of the Arbitration Act, 1940

The petition of the petitioner above named most respectfully,

Showeth :

1. That in pursuance of the arbitration agreement made by and between the parties hereto on or about _____ the parties appointed Mr _____ of _____ as the sole arbitrator on _____ who entered upon the reference to determine the disputes and differences settled by the parties.

2. That the sole arbitrator could not complete the proceedings of arbitration and make the award within the specified time which expired on _____

3. That there are no laches on the part of the petitioner It is therefore prayed that the time for making the award be extended for a period of four months and the arbitrator be directed to make the award within the extended time.

Date _____

_____Applicant

APPENDIX '30'

In the Court of Civil Judge at Allahabad

AB (Name, description and address)

_____ Petitioner

Vs.

CD (Name, description and address)

_____ Respondent

Application under Section 30 of the Arbitration Act, 1940

The humble petition of the petitioner above-named most respectfully

Showeth :

1. That the parties appointed Mr _____ of _____ as the sole arbitrator in terms of arbitration agreement to adjudicate and settle the disputes and differences arising out of the contract made between the parties.

2. The said arbitrator entered upon the reference on _____ and made the award on _____ a copy of which is filed herewith.

3. That the said award is invalid and should be set aside on the following amongst other.

Grounds

- (i)
- (ii)
- (iii)
- (iv)
- (v)

4. In the premises, the arbitrator has misconducted himself or the proceedings.

5. That the petitioner received the notice of filing of the award under Section 14(2) of the Arbitration Act, 1940 on _____

It is therefore prayed that the award of Mr _____ made on as stated above be set aside.

Date _____

_____ Applicant

APPENDIX '31'

In the Court of Civil Judge at Allahabad

AB (Name, description and address)

_____ Petitioner

Vs.

CD (Name, description and address)

_____ Respondent

Application under Section 33 of the Arbitration Act, 1940

The humble petition of the petitioner above-named most respectfully,

Showeth :

1. That on or about _____ the petitioner entered into an agreement containing arbitration clause with the respondent which subsequently turned out to be void.

2. That the petitioner received a notice dated _____ from the respondent in terms of the said purported arbitration clause to appoint an arbitrator.

3. That the said agreement containing the clause is invalid and not binding on the petitioner on the following amongst other.

Grounds

(i)

(ii)

(iii)

(iv)

4. This court has jurisdiction over the subject-matter of the alleged disputes.

It is therefore prayed that the existence or validity of the alleged agreement dated _____ be determined by this court.

Dated _____

_____ Applicant

APPENDIX '32'

In the Court of Civil Judge at Allahabad

Suit No _____ of _____

AB (Name, description and address)

_____ Plaintiff

Vs.

CD (Name, description and address)

_____ Defendant

Application under Section 34 of the Arbitration Act, 1940

The humble petition of the defendant above-named most respectfully

Showeth :

1. That the plaintiff has filed a suit being Suit No _____ of _____ in the court for breach of the agreement made between the parties here to on _____. A copy of the plaint is filed herewith and marked with letter 'A'.

2. That the said agreement contains an arbitration clause for referring all disputes and differences arising out of the said agreement. A copy of the said agreement is filed herewith and marked with letter 'B'.

3. That the defendant is served with the summons to appear and defend the said suit. The next date of hearing is fixed on _____.

4. That the subject-matter of the said suit is covered by the arbitration clause as stated above.

5. That the defendant was ready when the proceedings in the suit were commenced, and is still ready and willing to do all things necessary to the proper conduct of the arbitration.

6. That the defendant has not filed any written statement or taken any other steps in the proceedings of the said suit.

It is therefore prayed that the proceedings in the suit being No _____ of _____ be stayed till the award of the arbitrator appointed in terms of the arbitration clause be made.

Date _____

_____ Applicant

APPENDIX '33'

In the Court of Civil Judge at Allahabad

AB (Name, description and address)

_____ Petitioner

Vs

CD (Name, description and address)

_____ Respondent

Application under section 38 (1) of the Arbitration Act, 1940.

The petition of the petitioner above named most respectfully,

Showeth :

1. That disputes and differences arose between the parties hereto out of the contract dated _____ and these were referred to arbitration of Sri _____ in pursuance of the arbitration clause in the said Contract.

2. That the said arbitrator entered upon the reference on _____ and completed the proceedings on or about _____

3. That the said arbitrator has demanded payment of Rs _____ as his fees by a letter dated _____ and has refused to deliver his award except on payment of the said fees.

4. That the time for making the award shall expire on _____

5. That the petitioner will pay into the Court the amount of fees demanded by the said arbitrator or any other sum as determined by the Court after enquiry into the claims of the said arbitrator and the arbitrator be directed to deliver the award to the petitioner.

Under the circumstances petitioner prays for orders :

(a) That the arbitrator be directed to deliver the award to the petitioner within a week from the date of deposit of fees of the arbitrator to the Court.

(b) Any other further order or orders or directions as the Court may deem fit and proper.

Date _____

_____ Applicant

APPENDIX- '34'

In the Court of Civil Judge at Allahabad

Appeal under section 39 of the Arbitration Act, 1940.
Memorandum of Appeal.

Award case No _____ of _____

AB (Name, description and address)

_____ Applicant

Vs

CD (Name, description and address)

_____ Respondent

Being aggrieved by and dissatisfied with the judgment and order passed by _____ on _____ in the Award case No _____ of _____ the appellant begs to prefer this appeal on the following amongst other,

Grounds

1. For that the Learned Judge was wrong for not holding that the award should be set aside.
2. For that the Learned Judge should have held that the Arbitrator misconducted himself and the proceedings.
3. For that the Learned Judge comitted error of facts and law.
4. For that the Leanmed Judge should have held that the award has been improperly procured or is otherwise invalid.
5. For that the Learned Judge should have held that there is an error on the face of the award.
6. For that the judgment and order passed by _____ on _____ is otherwise bad in law and should be set aside and such other order may be passed as the court thinks fit in accordance with law.

Date _____

_____ Appellant

APPENDIX-'35'

In the Court of Civil Judge at Allahabad

Spl. Suit No _____ of _____

AB (Name, description and address)

_____ Petitioner.

Vs

CD (Name, description and address)

_____ Respondent

Application under section 41 of the Arbitration Act, 1940.

The petition of the petitioner above named is most respectfully,

Showeth :

1. That by an agreement between the parties hereto made on _____ the petitioner supplied cotton yarn to the respondent for the value of Rs _____

2. That the respondent accepted the said goods unconditionally, but has failed to pay the price thereof and raised a dispute as to the quality of the yarn.

3. That in terms of arbitration clause of the said agreement, the petitioner asked by a notice to nominate the arbitrator but has not done so as yet.

4. That the petitioner has filed a suit being No _____ of _____ under sec. 20 of the Arbitration Act.

5. That the petitioner has come to know that the said yarn has been left uncared so as to cause deterioration in quality and value.

6. That the respondent is also trying to dispose of his property and to evade jurisdiction of this court.

7. This application is made bonafide and for the ends of justice. Your petitioner therefore prays that :

(a) Order be passed for appointment of receiver over the properties of the respondent.

(b) Order of injunction restraining the respondent, his servant or agent from disposing the properties of the respondent.

(c) Ad interim order in terms of prayers (a) and (b) above.

(d) Any other further order or orders or direction the court may deem fit and proper.

Date _____

_____ Applicant

APPENDIX- '36'

The Arbitration (Protocol and Convention) Act, 1937

*Received the assent of the Governor-General on
the 4th March, 1937*

(Act No. VI of 1937)

An Act to make certain further provisions respecting the law
of arbitration in India.

Whereas India was a State signatory to the Protocol on Arbitration
Clauses set forth in the First Schedule, and to the Convention on the Execu-
tion of Foreign Arbitral Awards set forth in the Second Schedule, subject
in each to a reservation of the right to limit its obligations in respect there-
of to contracts which are considered as commercial under the law in force
in India.

And whereas it is expedient, for the purpose of giving effect to the
said Protocol and enabling the said Convention to become operative in
India, to make certain further provisions respecting the law of arbitration.

It is hereby enacted as follows :

1. Short title, extent and operation : (1) This Act may be called
the Arbitration (Protocol and Convention) Act, 1937.

(2) It extends to the whole of India.

(3) The provisions of this Act, except this section, shall have effect
only from such date as the Central Government may, by notification in the
Gazette of India, appoint in this behalf, and the Central Government may
appoint different dates for the coming into effect of different provisions of
the Act.

Statement of Objects and Reasons : The Government of India have had
for sometime under consideration the question, of India's adherence to the
Geneva Protocol on Arbitration Clauses (1923) and the International Con-
vention on the Execution of Foreign Arbitral Awards (1927). The object
of these Instruments is to meet the widely expressed desire of the commer-
cial world that arbitration agreements should be ensured of effective recog-
nition and Protection. A large number of countries including many of first
class commercial and industrial importance, e.g. the United Kingdom, France
Germany, the Netherlands have adhered to these Instruments.

After consulting local Governments, High Courts and commercial
bodies, a majority of whom were formed to be in favour of India's accession
to these Instruments, the case was placed before the Commerce Department

Standing Advisory Committee of the Legislature who recommended that India should adhere to the Instruments. These have accordingly been signed at Geneva on behalf of India, subject to reservations limiting India's obligations under the Instruments to commercial contracts and excluding the Indian States from the scope of the Instruments.

The Instruments provide for their notification by contracting party before they are enforced in respect of that party. Prior to ratification it is necessary to enact legislation to implement certain obligations contracted under these Instruments, and the present Act incorporates the legislation needed in this respect :— *Vide Gazette of India, 1936 Part V, Page 10.*

Interpretation : In this Act "foreign award" means an award on differences relating to matters considered as commercial under the law in force in India, made after the 28th day of July, 1924,

- (a) in pursuance of an agreement for arbitration to which the Protocol set forth in the First Schedule applies, and
- (b) between persons of whom one is subject to the jurisdiction of some one of such Powers as the President, being satisfied that reciprocal provisions have been made, may, by notification in the Gazette of India, declare to the parties to the convention set forth in the Second Schedule, and of whom the other is subject to the jurisdiction of some other of Powers as aforesaid, and
- (c) in one of such territories as the President being satisfied that reciprocal provisions have been made may by like notification, declare to be territories to which the said convention applies, and for the purpose of the Act an award shall not be deemed to be final in any proceedings for the purpose of contesting the validity of the award are pending in the country in which it was made.

3. Stay of proceedings in respect of matters to be referred to arbitration : Notwithstanding anything contained in the Arbitration Act, 1889, or in the Code of Civil Procedure, 1908, if any party to a submission made in pursuance of an agreement to which the Protocol set forth in the First Schedule as modified by the reservation subject to which it was signed by India applies, or any person claiming through or under him, commences any legal proceeding in any court against any other party to the submission or any person claiming through or under him in respect of any matter agreed to be referred, any party to such legal proceedings may, at any time after appearance and before filing a written statement for taking any other steps in the proceedings, apply to the court to stay the proceedings;

and the court unless satisfied that the agreement or arbitration has become inoperative or cannot proceed, or that there is not in fact any dispute between the parties with regard to the matter agreed to be referred, shall make an order staying the proceedings.

4. Effect of foreign awards:— (1) A foreign award shall, subject to the provisions of this Act, be enforceable in India as if it were an award made on a matter referred to arbitration in India.

(2) Any foreign award which would be enforceable under this Act shall be treated as binding for all purposes on the persons as between whom it was made, and may accordingly be relied on by any of those persons by way of defence set off or otherwise in any legal proceedings in India and any references in this Act to enforcing a foreign award shall be construed as including reference to relying on an award.

5. Filing of foreign award in court : (1) Any person interested in a foreign award may apply to any court having jurisdiction over the subject-matter of the award that the award be filed in court.

(2) The application shall be in writing and shall be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants.

(3) The court shall direct notice to be given to the parties to the arbitration other than the applicant requiring them to show cause, within a time specified, why the award should not be filed.

6. Enforcement of foreign award : (1) When the court is satisfied that the foreign award is enforceable under this Act, the court shall order the award to be filed and shall proceed to pronounce judgment according to the award.

(2) Upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except in so far as the decree is in excess of or not in accordance with the award.

7. Conditions for enforcement of foreign awards : (1) In order that a foreign award may be enforceable under this Act it must have—

- (a) been made in pursuance of an agreement for arbitration which was valid under the law by which it was governed,
- (b) been made by the tribunal proceeded for in the agreement or constituted in manner agreed upon by the parties,
- (c) been made in conformity with the law governing the arbitration procedure,
- (d) become final in the country in which it was made,

- (e) been in respect of a matter which may lawfully be referred to arbitration under the law of India, and the enforcement thereof must not be contrary to the public policy or the law of India.

(2) A foreign award shall not be enforceable under this Act if the court dealing with the case is satisfied that—

- (a) the award has been annulled in the country in which it was made,
- (b) the party against whom it is sought to enforce the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case, or was under some legal incapacity and was not properly represented, or
- (c) the award does not deal with all the questions referred or contains decisions on matter beyond the scope of the agreement for arbitration :

Provided that if the award does not deal with all questions referred the court may, if it thinks fit, either postpone the enforcement of the award or order its enforcement subject to the giving of such security by the person seeking to enforce it as the court may think fit.

- (3) If a party seeking to resist the enforcement of a foreign award proves that there is any ground other than the non-existence of the conditions specified in clauses (a), (b) and (c) of, sub-section (1) or the existence of the conditions specified in clauses (b) and (c) of subsection (2), entitling him to, contest the validity of the award the court may, if it thinks fit either refuse to enforce the award or adjourn the hearing until after the expiration of such period as appears to the court to be reasonably sufficient to enable that party to take the necessary steps to have the award annulled by the competent Tribunal.

8 Evidence : (1) The party seeking to enforce a foreign award must produce—

- (a) the original award or a copy thereof duly authenticated in manner required by the law of the country in which it was made;
- (b) evidence providing that the award has become final; and
- (c) such evidence as may be necessary to prove that the award is a foreign award and that the conditions mentioned in clauses (a), (b) and (c) of sub-sec. (1) of sec 7 are satisfied.

(2) Where any document requiring to be produced under sub-sec. (1) is in a foreign language, the party seeking to enforce the award shall produce a translation into English certified as correct by a diplomatic or consular agent of the country to which that party belongs or certified as correct in such other manner as may be sufficient according to the law in force in India.

9. **Saving :** Nothing in this Act shall—

- (a) prejudice any rights which any person would have of enforcing in India any award or of availing himself in India of any award if this Act had not been passed, or
- (b) apply to any award made on an arbitration agreement governed by the law of India.

10. **Rule-making power of the High Court :** The High Court may make rules consistent with this Act as to—

- (a) the filing of foreign awards and all proceedings consequent thereon or incidental thereto;
- (b) the evidence which must be furnished by a party seeking to enforce a foreign award under this Act, and
- (c) generally, all proceedings in court under this Act.

APPENDIX '37'

The Foreign Awards (Recognition and Enforcement Act, 1961

(Act 45 of 1961)

(30th November, 1961)

Preamble : An Act to enable effect to be given to the convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on the tenth day of June, 1958, to which India is a party and for purposes connected therewith.

Be it enacted by Parliament in the Twelfth Year of the Republic of India as follows :

1. Short title and extent : (1) This Act may be called the Foreign Award (Recognition and Enforcement) Act, 1961.

(2) It extends to the whole of India.

2. Definition : In this Act, unless the context otherwise requires, "foreign award" means an award on differences between persons arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India, made on or after the 11th day of October 1960—

(a) in pursuance of an agreement in writing for arbitration to which the convention set forth in Schedule applies, and

(b) in one of such territories as the Central Government being satisfied that reciprocal provisions have been made may, by notification in the Official Gazette declare to be territories to which the said convention applies.*

***3. Stay of proceedings in respect of matters to be referred to arbitration :** Notwithstanding anything contained in the Arbitration Act, 1940 or in the Code of Civil Procedure, 1908, if any party to an agreement to

* Notifications under sec. 2(b) :—(1) Federal Republic of Germany, (2) Switzerland (3) Czechoslovak Socialist Republic, (4) Union of Soviet Socialist Republics, (5) Finland, (6) Greece, (7) Ecuador, (8) Bulgaria, (9) Rumania, (10) Norway, (11) Poland, (12) Hungary (13) France, (14) Japan, (15) Philippines, (16) United State of America, (17) Tanzania, (18) The Netherlands, (19) Thailand, (20) Sweden, (21) Austria, (22) Nigeria, (23) Tunisia, (24) Ghana, (25) Morocco,

* Substituted for the following original Sec. 3 of the Foreign Awards (Recognition and Enforcement) Act 45 of 1961 by Amending Act, 1973 which came into operation on 26-11-1974.

- “3. Stay of proceedings in respect of matters to be referred to arbitration : Notwithstanding anything contained in the Arbitration Act, X of 1940, in the Code of Civil Procedure, 1908, if any party to a submission made in pursuance of an agreement to which the convention set forth in the Schedule applies, or any person claiming through or under him, commences any legal proceedings in any court against any other party to the submission or any person claiming through or under him in respect of any matter agreed to be referred, any party to such legal proceedings, may at any time after appearance or before filing a written statement or taking any other steps in the proceedings, apply to the court to stay the proceedings and the court, unless satisfied that the agreement is null and void inoperative or incapable of being performed or that there is not in fact any dispute between the parties with regards to the matter agreed to be referred, shall make an order staying the proceeding.”

which Article II of the convention set forth in the Schedule applies, or any person claiming through or under him commences any legal proceedings in any court against any other party to the agreement or any person claiming through or under him in respect of any matter agreed to be referred to arbitration in such agreement, any party to such legal proceedings may, at any time after appearance and before filing a written statement or taking any other step in the proceedings, apply to the court to stay the proceedings and the court unless satisfied that the agreement is null and void, inoperative or incapable of being performed or that there is not, in fact, any dispute between the parties with regard to the matter agreed to be referred, shall make an order staying the proceedings.

In *Far East Steamship Lion U.S.S.R. Vs. Union of India* AIR 1973 Mad 169, the court held, on the authority of *In re Elefthera (P.D.A.)*, (1969) 2 WLR 1073, and on considerations of the facts and circumstances of the case the situation in the conflict of laws and jurisdiction do not demand that a foreign jurisdiction clause should be enforced as always binding on the parties thereto. See also *Michael Vs. Serajuddin* AIR 1963 SC 1044 (it is for the court having regard to all circumstance, to arrive at a conclusion whether sufficient reasons are made out for refusing to grant a stay).

4. Effect of foreign awards : (1) A foreign award shall subject to the provisions of this Act, be enforceable in India as if it were an award made on a matter referred to arbitration in India.

(2) Any foreign award which would be enforceable under this Act shall be treated as binding for all purposes on the persons as between whom it was made and may accordingly be relied on by any of those persons by way of defence, set off or otherwise in any legal proceedings in India and any references in this Act to enforcing a foreign award shall be construed in including references to relying on an award.

5. Filing of foreign award in court : (1) Any person interested in a foreign award may apply to any court having jurisdiction over the subject-matter of the award that the award be filed in court.

(2) The application shall be in writing and shall be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants.

(3) The court shall direct notice to be given to the parties to the arbitration, other than the applicant, requiring them to show cause, within a time specified why the award should not be filed.

6. Enforcement of foreign award: (1) Where the court is satisfied that the foreign award is enforceable under this Act, the court shall order the award to be filed and shall proceed to pronounce judgment accordingly to the award.

(2) Upon the judgment so pronounced a decree shall follow and no appeal shall lie from such decree except in so far as the decree is in excess of or not in accordance with the award.

7 Conditions for enforcement of foreign awards : (1) A foreign award may not be enforced under this Act—

- (a) if the party against whom it is sought to enforce the award proves to the court dealing with the case that—
- (i) the parties to the agreement were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it, or failing any indication thereon, under the law of the country where the award was made ; or
 - (ii) that party was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case ; or
 - (iii) the award deals with questions not referred or contains decisions on matters beyond the scope of the agreement :
Provided that if the decisions on matters submitted to arbitration can be separated from those not submitted, that part of the award which contains decisions on matters submitted to arbitration may be enforced ; or
 - (iv) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place;
or

(v) the award has not yet become binding on the parties or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made ; or

(b) if the court dealing with the case is satisfied that—

(i) the subject-matter of the difference is not capable of settlement arbitration under the law of India ; or

(ii) the enforcement of the award will be contrary to the public policy.

(2) If the court before which a foreign award is sought to be relied upon is satisfied that an application for the setting aside or suspension of the award has been made to a competent authority referred to in sub-clause (v) of clause (a) of sub-sec. (1) the court may, also, on the application of the party claiming enforcement of the award, order the other party to furnish suitable security.

8 Evidence : (1) The party applying for the enforcement of a foreign award shall, at the time of the application, produce—

(a) the original award or a copy thereof duly authenticated in the manner required by the law of the country in which it was made ;

(b) the original agreement for arbitration or a duly certified copy thereof ; and

(c) such evidence as may be necessary to prove that the award is a foreign award.

(2) If the award or agreement requiring to be produced under sub-sec. (1) is in a foreign language, the party seeking to enforce the award shall produce a translation into English certified as correct by a diplomatic or consular agent of the country to which that party belongs or certified as correct in such other manner as may be sufficient according to the law in force in India.

9. Savings : Nothing in this Act shall—

(a) prejudice any rights which any person would have had of enforcing in India of any award or of availing himself in India of any award if this act had not been passed ; or

(b) apply to any award made on an arbitration agreement governed by the law of India.

10 Repeal : The Arbitration (Protocol and Convention) Act, 1937 shall cease to have effect in relation to foreign awards to which the Act applies.

11. Rule-making power of the High Court: The High Court may make rules consistent with this Act as to —

- (a) the filing of foreign award and all proceedings consequent thereon or incidental thereto;
- (b) the evidence must be furnished by a party seeking to enforce a foreign award under this Act; and
- (c) generally, all proceedings in court under this Act.

THE SCHEDULE

(See Secs. 2 and 3)

Convention on the Recognition and Enforcement of Foreign Arbitral Awards

(Adopted by the United Nations Conference on the International
Commercial Arbitration, June 10, 1958)

Article I

1. The Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.

2. The term "arbitral awards" shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.

3. When signing, ratifying or acceding to this Convention, or notifying extension under Article X hereof, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships whether contractual or not which are considered as commercial under the national law of the State making such declaration.

Article II

1. Each contracting State shall recognise an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of defined legal relationship, whether contractual or not, concerning a subject-matter capable of settlement by arbitration.

2. The term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.

3. The court of a Contracting State, when seized of action in a matter in respect of which the parties have made an agreement within the meaning of this article shall at the request of one of the parties refer the parties to arbitration unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

Article III

Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral award to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

Article IV

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply :

- (a) the duly authenticated original award or a duly certified copy thereof.
- (b) The original agreement referred to in Article II or a duly certified copy thereof.

2. If the said award or agreement is not made in an official language of the country in which the award relied upon the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

Article V

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked only if that party furnishes to the competent authority where the recognition and enforcement is sought, prove that—

- (a) The parties to the agreement referred to in Article II were, under the law applicable to them under some incapacity, or the said agreement is not valid under the law to which the parties

have subjected it or, failing any indication thereon, under the law of the country where the award was made ; or

- (b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or
- (c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decision on matters beyond the scope of submission to arbitration, provided that, if the decisions, on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognised and enforced ; or
- (d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement was not in accordance with the law of the country where arbitration took place ; or
- (e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which that award was made.

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that—

- (a) The subject-matter of the difference is not capable of settlement by arbitration under the law of that country ; or
- (b) The recognition or enforcement of the award would be contrary to the public policy of that country.

Article VI

If an application for the setting aside or suspension of the award has been made to a competent authority referred to in Article V (1)(e) the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

Article VII

1. The provisions of the present convention shall not affect the validity of multilateral or bilateral agreement concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

2. The Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention of the Execution of Foreign Arbitral Awards of 1927 shall cease to have effect between Contracting States on their becoming bound and to the extent that they become bound, by this Convention.

Article VIII

1. This convention shall be open until 31st December 1958 for signature on behalf of any Member of the United Nations and also on behalf of any other State which is or hereafter becomes member of any specialized agency of the United Nations, or which is or hereafter becomes a party to the Statute of the International Court of Justice, or any other state to which an invitation has been addressed by the General Assembly of the United Nations.

2. This convention shall be ratified and the instrument of ratification shall be deposited with the Secretary General of the United Nations.

Article IX

1. This Convention shall be open for accession to all States referred to in Article VIII.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article X

1. Any state may, at the time of signature, ratification or accession declare that this convention shall extend to all or any of the territories for the international relations of which it is responsible, such a declaration shall take effect when the convention enters into force for the state concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary General of the United Nations of this notification, or as from the

date of entry into force of the convention for the state concerned, which ever is the later.

3. With respect to those territories to which this convention is not extended at the time of signature, ratification or accession, each state concerned shall consider the possibility of taking the necessary steps in order to extend the application of this convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Government of such territories.

Article XI

In the case of a federal or non-unitary state, the following provisions shall apply :

- (a) With respect to those articles of this convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal Government shall to this extent be the same as those of Contracting States which are not federal states ;
- (b) With respect to those articles of this convention that come within the legislative jurisdiction of constituent states or provinces which are not, under the constitutional system of the federation, bound to take legislative action, the federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of constituent states or provinces at the earliest possible moment ;
- (c) A federal state party to this convention shall at the request of any other contracting state transmitted through the Secretary-General of the United Nations supply a statement of the law and practice of the federation and its constituent units in regard to any particular provisions of this convention, showing the extent to which effect has been given to that provision by legislative or other action.

Article XII

1. This convention shall come into force on the ninetieth day following the date of deposit of the third instrument of ratification or accession.

2. For each state ratifying or according to this convention after the deposit of the third instrument of ratification or accession, this convention shall enter into force on the ninetieth day after deposit by such states of its instrument of ratification or accession.

Article XIII

1. Any contracting state may denounce this convention by a written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Any state which has made a declaration of notification under Article X may, at any time thereafter, by notification to the Secretary-General of the United Nations, declare that this convention shall cease to extend to the territory concerned one year after the date of the receipt of the notification by the Secretary-General.

3. This convention shall continue to be applicable to arbitral awards in respect of which recognition or enforcement proceeding have been instituted before the denunciation takes effect.

Article XIV

A contracting state shall not be entitled to avail itself of the present convention against other contracting states except to the extent that it is itself bound to apply the convention.

Article XV

The Secretary-General of the United Nations shall notify the States contemplated in Article VII of the following :

- (a) Signature and ratifications in accordance with Article VIII;
- (b) Accessions in accordance with Article IX;
- (c) Declarations and notifications under Articles I, X and XI;
- (d) The date upon which this convention enters into force in accordance with Article XIII.
- (e) Denunciations and notifications in accordance with Article XIII

Article XVI

1. This Convention of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit a certified copy of this convention to the States contemplated in Article VIII.

High Court Rules Framed Under Section 44

Allahabad High Court

ARBITRATION RULES

1. Preliminary: The Rules contained in this chapter are made under sec. 44 of the Arbitration Act, 1940, hereinafter referred to as the Act.

2. Presentation of application under the Arbitration Act, 1940
All applications under the Act shall be made by petition and shall be presented to the court in the same manner as a plaint or other application. The petition shall be verified in the same manner as a plaint and shall, if necessary, be supported by an affidavit.

3. Form of petition : The petition shall be divided into paragraphs numbered consecutively, and shall contain the name, description and place of residence of the petitioner as well as the opposite party and a statement in summary —

- (a) of all material facts ;
- (b) of facts showing that the court to which the application is presented has jurisdiction ; and
- (c) of the nature of the relief asked for;
and shall specify the names, descriptions and places of residence of other persons likely to be affected by it.

4. Statement of special case under sec. 13 (b) of the Act :
(1) In a reference under sec. 13 (b) of the Act, the question of law on which the opinion of the court is sought and the facts out of which it arises shall be distinctly stated. A copy of the arbitration agreement, if any, shall be annexed to such reference. The arbitrator or umpire making the reference shall give notice of the action taken by them to the parties concerned.

(2) When the court has pronounced its opinion under sec. 14 (3) of the Act, a copy thereof shall be sent to the arbitrators or umpire making the reference and they shall have such opinion added to and made part of the award.

5. Cases to be registered as suits or miscellaneous cases :

A case in which the award is filed under sec. 14 (2) or an application made under sec. 20 (1) of the Act shall be numbered and registered as a suit. Other applications under the Act shall be numbered and registered as a miscellaneous case.

6. Issue of notice : After a petition has been presented the court may, if it is not in order or according to law, reject it. If it is not so rejected, the court shall direct notice thereof to be given to all persons mentioned in the petition and to such other persons as may seem to it to be likely to be affected by the proceedings, requiring all or any of such persons to show cause, within the time specified in the notice, why the relief sought in the petition should not be granted. Such notice shall be accompanied by copies of the petition and the affidavit, if any, copies being supplied by the petitioner.

7. Payment of process-fees : (1) The petitioner shall deposit the necessary process-fees for service of notice on the other parties concerned within seven days of the order directing the issue of notice or within such further time as the court may, for sufficient cause shown, allow.

(2) The party who may have requested the arbitrators or umpire under sec. 14 (2) of the Act to cause an award to be filed shall, within seven days after the filing of the award or within such further time as the court may, for sufficient cause shown, allow deposit the necessary process-fees for the service of notice on the other parties concerned.

8. Mode of filing award: (1) Where the award is filed by the arbitrators or umpire under sec. 14 (2) of the Act they shall send to the court under sealed cover the award or a signed copy thereof together with any proceedings or depositions and documents which may have been taken and proved before them and the opinion pronounced by the court on the special case under sec. 14 (3) of the Act if any. They shall also send with the award a copy of the notice given to the parties concerned under sec. 14 (1) of the Act. If the sealed cover is sent, by post, it shall be sent under registered cover.

(2) Where the award is filed by a party to the arbitration, any party may move the court to direct the arbitrators or umpire to produce before it any proceedings or depositions and documents which may have been taken and proved before them together with the record of the arbitration which may be in their possession.

9. Application under sec 20 (1) of the Act : Every application under sec. 20 (1) of the Act shall be accompanied by a copy of the arbitration agreement.

10. Issue of processes at the request of arbitrators or umpire : (1) The court shall cause processes to be issued to the parties to an arbitration proceeding or to witness on the written request of the arbitrators or umpire.

(2) If the proceedings are under Chapter II of the Act the request for the issue of such processes shall be accompanied by a copy of the agreement under which the arbitrators or umpire are acting.

11. Court-fees and process-fees : Court-fees and process-fees chargeable with respect to all matters under the Act shall be, as nearly as may be, in accordance with the provisions of the Court Fees Act, 1870, and the rules for the time being in force relating to the payment of such fees on the original side

12. Procedure : In matters not provided for in this chapter the provisions of the code and any rules governing the proceedings of the court shall, so far as may be and with necessary modifications and adaptations, apply to all proceedings including appeals under the Act before the court.

13. Proceedings in Subordinate Courts : The rules contained in this chapter shall with necessary modifications and adaptations also apply to proceedings under the Act in subordinate courts.

APPENDIX 39

Award in Reference in pending suit

In the matter of an arbitration between A. B. etc. & C. D. etc.

Whereas in pursuance of an order of reference made by the court of _____ and dated the _____ the following matter in difference between A.B. and C.D. has been referred to me (us) for determination, namely _____

Now, I (we) having duly considered the matter referred to me (us) hereby make my (our) award as follows :

I (we) award :

(1) _____

(2) _____

Dated _____ (place) the _____ day of _____

Signed _____

in the presence of

APPENDIX 40

Award by Umpire

(Title to depend or whether the Award is a result of court intervention
or by private agreement)

In re :

In the matter of the Arbitration Act, 1940

and

In the matter of the difference between _____

Whereas by an agreement, dated _____ made between
A.B. and C.D. by an order of reference, dated _____ In the above
suit I was appointed Umpire to decide upon any matter within the scope of
the reference on which the arbitrators either failed to arrive at a decision
or disagreed between themselves.

And Whereas, A B. and C.D. the arbitrators have referred the under-
noted matter in difference for my final determination :

(Give details)

Now I, _____ having duly considered the entire evidence,
oral and documentary, produced and filed before the said arbitrators and
having heard the parties DO HEREBY make my final Award as follows :

I Award and Direct :

(as in Precedent No. 8).

As Witness my hand this _____ day of _____ 19_____

Sd/- _____

Umpire

APPENDIX '41'

The London Court of Arbitration

The London Court of Arbitration, formed in 1892, is an impartial body prepared to appoint arbitrators at the request of disputants who themselves can be confident that their differences will be settled with the minimum of delay and expenditure by arbitrators of the highest standing and possessing expert knowledge.

RULES OF THE LONDON COURT OF ARBITRATION

Constitution of Tribunal

1. Name. This Arbitration Tribunal shall be called "The London Court of Arbitration", hereinafter referred to as "The Court".

2. Offices. The offices of the Court shall be at the London Chamber of Commerce, hereinafter called "The Chamber of Commerce", or at such place as the Council of Chamber of Commerce may from time to time determine.

3. Object. The Court of Arbitration shall be available both for voluntary references to arbitration, and for the arbitration of cases referred to by Courts of law or the Judges thereof.

4. The Court shall be constituted of : (a) Members appointed by the Council of the Chamber of Commerce, and (b) Members appointed by the Common Council of the Corporation of the City of London.

5. The Arbitration Committee of the London Chamber of Commerce shall have the general administration and management of the Court and shall with the sanction of the Council of the London Chamber of Commerce appoint, or remove, the Registrar and other of its officers (if any).

6. Duties of Registrar. The duties of the Registrar or Acting Registrar (if any), shall be as follows :

He shall by himself or his subordinate receive arbitration agreement and fees and costs, give all necessary notices to the arbitrators and umpires, give notice of hearing to parties and all prescribed or necessary notices, keep a register of arbitration agreements, a register of Awards and Reconciliations, and such other books and memoranda and make such returns as the Court shall from time to time require. He shall render such assistance to the arbitrator,

arbitrators or umpire in an arbitration as he or they may legally and properly require ; he shall direct other officers of the Court (if any), and report to the Court anything in the conduct of any officer deserving of report, and generally shall carry out the instructions of the Arbitration Committee.

7. Deputy Registrar. If an Acting or Deputy Registrar is appointed he may, during the absence of the Registrar, perform the duties of the Registrar, and at other times discharge such other duties as the Court may direct.

8. The Court may, at its discretion, and either generally or in any specific case, or subject to any rules or conditions delegate to its Chairman, or to a sub-committee or sub-committees or any members of the Court, or to the Registrar or Acting Registrar or other officer thereof all or any of the powers and duties prescribed by these Rules.

9. Urgency Committee The Court shall annually appoint a standing sub-committee consisting of the Chairman, Deputy Chairman and six other members to be called the "Urgency Committee", whose duty it shall be in all references deemed by the Registrar or the Acting Registrar to be urgent either to appoint an arbitrator or arbitrators, and where necessary an umpire, to deal with the reference under consideration or alternatively to direct that the Court shall forthwith be summoned to make such order thereon as circumstances may render appropriate. Three members of the Urgency Committee shall form a quorum, and such Committee may be called by telephone, telegram, or by letter, according to the discretion of the Registrar or Acting Registrar. A meeting of the Court may be called in like manner if the Urgency Committee so directs.

The Urgency Committee shall report their action to the Court at the next meeting of that body in all cases referred to them.

Appointment of Arbitrators

10. It shall be the duty of the London Court of Arbitration to prepare and maintain a panel of qualified persons willing to act as arbitrators. Such panel or any part thereof may be from time to time revised by the said Court in such manner as they think fit.

11. (1) All arbitrations under these Rules shall be held before one arbitrator or two arbitrators, and when requested by the arbitrators or either side with the addition of an umpire or three arbitrators according to the desire of the parties. Unless the parties or all some of them otherwise expressly stipulate or the Court shall think fit to appoint two or more arbit

rators the arbitration shall be held by one arbitrator.

(b) The Court may (subject to Rule 34) nominate, appoint or select any person or persons to the arbitrator, arbitrators or umpire in any reference to arbitration under these Rules.

(c) If the reference be to two arbitrators, they shall (provided the said Court has not appointed an umpire under the last preceding clause) before entering upon the reference appoint an umpire, but if they fail to appoint such umpire within ten days from the appointment of the arbitrator last appointed the said Court shall appoint an umpire and he shall have the like power to act in the reference and make an award as if he had been appointed by the consent of the parties.

(d) If the reference be to two arbitrators and an umpire the umpire may if the arbitrators have so agreed sit with the arbitrators at the holding of the arbitration and in such case if the arbitrators cannot agree upon their award make his award either after further hearing or without further hearing as he may think fit.

(e) If the reference be to three arbitrators the award of the majority shall be sufficient and binding on all parties.

12. Filling vacancies. If any arbitrator or umpire dies or if any arbitrator, arbitrators or umpire becomes unable to act or declines to act or to continue to act or is or becomes in the opinion of the Court unfit to act or for fourteen days after a notice from the parties or any of them or from the said Court fails to act or continue to act the said Court may, on the application of any party, remove such arbitrator arbitrators or umpire and appoint some other person or persons to act in his or their place.

13. Security of costs. The Court shall have power to direct that such sum of money that they may think fit shall be deposited with them as security for the fees, costs and expenses of the arbitration.

14. Form of agreement. If two or more persons have a difference which they wish to have determined in accordance with these Rules they shall, except in the case provided for in Rule 15 hereof, fill up and sign a submission in the form set out in the First Schedule hereto or to the like effect.

15. Whenever a written contract contains an agreement to submit any dispute which may arise in the future to the arbitration of the Court or the **המנדט** of **המנדט** or any officer thereof or any person to be nominated by them or him or in accordance with these Rules the parties shall not be required to sign any further agreement but the agreement shall

be deemed to contain an implied contract by all parties to submit to arbitration in accordance with these Rules and an implied undertaking to be bound by and to observe the award of the arbitrator arbitrators or umpire, and any interlocutory directions given or orders made by him or them.

16. Every arbitration agreement shall be deemed to contain a clause whereby all parties agree to waive any term in their contract which compels any party to lodge a complaint within a less period than fourteen days and any such terms shall be read as if the number fourteen were substituted therein for such less number of days.

17. Every submission to arbitration shall be deemed to contain an undertaking by all parties—

- (a) to pay the fees, costs and expenses of the arbitrator, arbitrators and umpire and the costs of the arbitration and award, in such manner as may by the award be directed; and
- (b) not to take any legal proceeding against the arbitrator, arbitrators or umpire or against the London Chamber of Commerce or its officers or the Court or its officers in respect of any matter arising in the arbitration.

Duties of Arbitrator

18. **Hearing of evidence.** The arbitrator, arbitrators or umpire shall hear the evidence and the arguments of the parties or their agents in the presence of all parties or their agents and determine the dispute in accordance therewith. If one or more parties shall fail to appear at any meeting of which due notice has been given, the arbitrator, arbitrators or umpire shall adjourn that meeting to a date not less than seven days from the original date thereof and give notice of such adjourned meeting to all parties. If any party shall fail to appear at such adjourned meeting, the arbitration may proceed in his or their absence, but save as aforesaid, the arbitrator, arbitrators or umpire shall not be entitled to hear evidence or arguments in the absence of any party and in no case shall he or they be entitled to inform themselves about any of the matters in dispute by means of conversations but shall rely entirely on the evidence given and documents and facts proved before him or them and on his or their own knowledge.

19. Notwithstanding anything in these Rules, it shall be competent for an arbitrator, arbitrators or umpire, in any case where all the parties so agree including cases where the only question in dispute is whether merchandise is equal in quality or condition to a sample and/or in accordance

with a contract, to make his or their award after a comparison of the sample and the bulk or the contract and the goods delivered and a perusal of the relevant documents without hearing *viva voce* evidence or arguments of the parties or their agents.

20. Ascertainment of price of goods. Notwithstanding anything in these Rules, where in any arbitration a question arises as to the price of goods at a particular date in some place other than that in which the arbitration is held, it shall be competent to the arbitrator, arbitrators or umpire to invite the Chamber of Commerce of such other place, or any trade organisation or Government official to furnish him or them with a certificate of such price on such date and he or they shall be entitled to receive such certificate in evidence without other proof than the signature of the responsible official of such Chamber of Commerce or trade organisation or of such Government official.

21. Award It shall be the duty of an arbitrator or arbitrators or umpire to use all reasonable despatch in entering on and proceeding with the reference and making an award.

22. The award, when not stated in the form of a special case, shall follow as near as may be the form set out in the Third Schedule hereto.

Powers of Arbitrator

23. Administration of oath. The arbitrator, arbitrators or umpire shall have power to administer an oath to the parties and their witnesses and shall do so in all cases unless all the parties agree that the evidence shall be taken without the sanction of an oath.

24. Interim orders. The arbitrator, arbitrators or umpire shall have power to make such order as he or they think fit for the interim protection warehousing, sale or disposal of the subject-matter of the arbitration. When the subject-matter of the arbitration is sold in accordance with this Rule the price received shall be paid forthwith into a separate banking account in the name of the London Chamber of Commerce pending the result of the arbitration.

25. Discovery. The arbitrator, arbitrators or umpire shall have power to direct the parties to disclose and produce to him or them and to each other any books or documents in their possession or power relevant to or touching any of the matters in dispute.

26. Interrogations. The arbitrator, arbitrators or umpire shall have power to direct any parties to answer upon oath such interrogatories as he

or they may permit, but shall only permit interrogatories which bear directly on any of the matters in dispute.

27. Evidence taken by examiner. The arbitrator, arbitrators or umpire shall have power to direct that the evidence of any witness or witnesses who are not resident in the district where the arbitration is being held and who cannot without undue inconvenience or expense attend the arbitration may be taken before an examiner.

28. Substituted service. The arbitrator, arbitrators or umpire shall have power to direct that notice of any step in the arbitration may be served on any party by means of substituted service on any person residing in the district where the arbitration is held who has been nominated by or is acting as agent or representative of such party for that purpose in that district.

29. Specific performance of contract. The arbitrator, arbitrators or umpire shall have power to order specific performance of any contract other than a contract relating to land or any interest in land.

30. Evidence by affidavit. The arbitrator, arbitrators or umpire shall have power to direct that the evidence of any witness may be given by affidavit, and to order that such witness shall attend before him or them for cross examination by any other party to the arbitration who may desire to cross examine him.

Procedure

31. Claims. A party applying for arbitration under these Rules in pursuance of an arbitration agreement or a submission shall address a written claim to the Court.

32. Such claim shall contain—

- (i) the names and addresses of the parties;
- (ii) a copy of the arbitration agreement ;
- (iii) a short preliminary statement of the nature of the dispute and of the claim made ;
- (iv) a request for the appointment of an arbitrator, arbitrators and/or umpire if not already appointed by agreement ;
- (v) if an arbitrator or arbitrators or an umpire have already been agreed upon, his or their names and addresses.

33. Appointment of arbitrator, arbitrators and/or umpire. If the parties agree in selecting an arbitrator, arbitrators or umpire they shall

be the Offices of the Court, 67, Cannon Street. London, E.C. 4, unless the arbitrator, arbitrators or umpire for special reasons otherwise order.

40. Subject to such adjournments as the arbitrator, arbitrators or umpire think just or convenient, the arbitration shall be continued *de die in diem* until concluded.

41. The arbitration shall be held in private and no person shall be entitled to be present except the parties, their representative or agents, the witnesses, and the officers of the Court.

42. **Counsel and solicitor.** Any party may be represented by a barrister or solicitor in the absence of any agreement to the contrary by all parties. Notice of intention to be so represented must be given to the Court and all other parties at least four days before the hearing.

43. **Agent.** Any party may appear in person or be represented by an agent other than a barrister or solicitor if he so desires, but such agent shall before taking any part in the proceedings produce to the arbitrator, arbitrators or umpire a written authority from his principal authorising such agent to appear for him.

44. **Chain of sales.** Where goods have been sold and resold on two or more occasions and the same, or substantially the same dispute arises on more than one contract of sale, it shall be competent for the arbitrator, arbitrators or umpire appointed to determine any one such dispute to invite the parties to any other such dispute to join in the arbitration to the end that all such disputes may be determined at the same time by means of an arbitration between the first seller and the last buyer.

45. **Service of notices.** In all cases where these Rules require notices to be served on any party and where the business address of any such party is given in the contract which contains the arbitration agreement, service of such notice may be effected, if directed by the arbitrator, arbitrators or umpire, by means of a cablegram addressed to the party concerned at the address so given in the contract or arbitration agreement unless such party shall have given to the other party notice of change of address or of some other address as his address for service, in which case the cablegram shall be directed to such new or other address.

Costs and Fees

46. (i) **Arbitrator's fees.** The parties to every arbitration under these Rules shall pay a fee for the services of the arbitrator, arbitrators and /or umpire in accordance with the scale set out in the Fifth Schedule hereto, and also his or their expenses.

(ii) **Orders as to costs.** The arbitrator, arbitrators or umpire may by his or their award direct any of the parties to pay the costs of the arbitration, including the fees and expenses payable to the arbitrator, arbitrators or umpire and the costs incurred by the parties, or may divide such costs between the parties in such proportion as he or they think fit and may assess the amount of such costs, or he or they may in the award expressly reserve the assessment of costs and direct that they shall be assessed before him or them at a subsequent date.

(iii) Subject as herein provided, the fees and expenses of the arbitrator, arbitrators or umpire shall be paid to him or them by the party taking up the award, without prejudice to the right of such party to recover such fees and expenses from any person or persons ultimately liable to pay the same.

(iv) If for ten days after notification has been given to the parties that the award has been made and is ready for delivery, no party takes up the award, then upon the expiration of such ten days the arbitrator's, arbitrators' and umpire's fees and expenses shall forthwith be payable and be paid to the arbitrator, arbitrators or umpire by the parties to the arbitration without prejudice to the right of any party who pays the same to recover such fees and expenses from any person or persons ultimately liable to pay the same.

(v) **Arbitrator's fees when dispute compromised.** In any case where, before the award is published, the reference is determined by the act of the parties, then if the same is so determined before notice has been given by the selected arbitrator, arbitrators or umpire of his or their consent to act in the particular case, the arbitrator, arbitrators or umpire shall not be entitled to any fees or expenses, but if it so determined after such notice has been given, then there shall forthwith be paid to such arbitrator or arbitrators and/or umpire by the several parties to the arbitration agreement, in equal shares the specified fees and expenses for such time as the arbitrator, arbitrators and/or umpire shall have sat to hear the case, and devoted to the perusal and consideration of the papers, and if he or they shall not at the time of such determination have sat to hear the case, or perused and considered the papers, then such fees and expenses as he or they would have been entitled to if he or they had held a sitting of one hour's duration for that purpose.

Award

47. Delivery of award. The arbitrator, arbitrators or umpire shall deliver his or their award in writing to the Court and any party to the reference may have a copy thereof on payment of the fees and expenses set out in the Fifth Schedule hereto.