

**Issue No:3**

**Dear All,**

**Greetings to you all,**

**We are happy to inform that Hon'ble Acting Chief Justice of Madras High Court is to take up the petitions filed praying for the appointment of Arbitrator from this week onwards.**

### **CASE STUDY**

**Parties to the Case: Deepak Kumar Bansal Versus Union of India & Another.**

**Case No: Civil Appeal No.1089 of 2009 (Arising out of (SLP) No.15730 of 2007)**

**Judgment dated: 17-02-2009**

**Judge: THE HONOURABLE MR. JUSTICE TARUN CHATTERJEE & THE HONOURABLE MR. JUSTICE V.S. SIRPURKAR**

**The question that arose before the Apex Court in the above mentioned case was of two folds.**

- 1. Where there is a restriction to refer case in excess of 20 % of the value of the work order, whether the initial work order alone should be taken or the supplementary work orders also should be taken for calculating the work order.**
- 2. Where a notification is issued subsequent to the contract restricting the arbitrability of a dispute can be valid and binding.**

**The Court held that a) The value of the supplementary work should also included to ascertain the value of the work order and b) a notification issued subsequent the execution of the contract restricting the arbitrability is not binding on the parties.**

**The relevant portion of the Judgment is as follows:-**

**"The High Court has only considered the original work order that was Rs.32,17,641.29, which, in our view, must be taken into account along with three supplementary work orders of Rs.4,99,471.36, Rs.3,25,865,02 and Rs.2,17,748.63 as mentioned herein earlier. Therefore, the High Court was wrong in holding that since the value of the claim of the appellant was more than 20% of the value of the work**

and in view of the Circular issued by the respondent, the claim must be held to be more than 20% of the value of the work and, therefore, disputes could not be referred to Arbitration. Even assuming that the claim was in excess of 20% of the total cost of the work, even then, the Circular, which came into effect from 11.06.2003 would not be applicable in the case of the appellant. There cannot be any dispute that the Circular intimating Clause 18 and issued on 11.06.2003 could not be applied in the case of the appellant as the said Circular came into force only from that date i.e. 11.06.2003 and not before that, in the absence of any subsequent insertion of that Clause in the original contract, namely, Clause 64 of the General Conditions of Contract.”

*The contents of the above Judgment is available in [www.judis.nic.in](http://www.judis.nic.in)*

## Quotable Quotes

*At all events, arbitration is more rational, just, and humane than the resort to the sword. By Richard Cobden.*

## Article

**Appointment of Arbitrator  
By G.Ashokapathy.**

“....

*One of the prime causes which stalls and defeats the object of arbitration is when there is no consensus in the appointment of an arbitrator. This adversity arises only because of inaccurate or due to lack of accomplished drafting, of an arbitration clause....” More on the article please see the attachment.*

## Up Coming Events:

His Lordship Mr.Justice K.Venkataraman, has consented to Inaugurate CNICA and CNICA Mediation Center’s branch in Kanyakumari District on 7<sup>th</sup> March 2009. There has been a change in the date.

The CNICA’s Kanyajumari District office shall be located at No.27/30 Sahotharar Street, K.P.Road, Nagercoil – 629001.

We appreciate your inputs, suggestions and contributions in this regard. We shall also appreciate if you could furnish us the email address of persons who would be interested in receiving our email.

**Regards**

**G.Ashokapathy  
Secretary,  
CNICA.**