

Bill No. XXV of 2015

THE COMMERCIAL COURTS, COMMERCIAL DIVISION AND
COMMERCIAL APPELLATE DIVISION OF HIGH COURTS
BILL, 2015

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CLAUSES

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Bill No. XXV of 2015

THE COMMERCIAL COURTS, COMMERCIAL DIVISION AND
COMMERCIAL APPELLATE DIVISION OF
HIGH COURTS BILL, 2015

A

BILL

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

BE it enacted by Parliament in the Sixty-sixth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

5 **1.** (1) This Act may be called the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

Short title,
extent and
commence-
ment.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different High Courts and for different provisions of this Act and any reference in any such provision to the High Court or to the commencement of this Act shall be construed as a reference to that High Court or the commencement of that provision: 5

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

Definitions.

2. (1) In this Act, unless the context otherwise requires,— 10

(a) "Commercial Appellate Division" means the Commercial Appellate Division in a High Court constituted under sub-section (3) of section 3;

(b) "Commercial Court" means the Commercial Court constituted under sub-section (1) of section 3;

(c) "commercial dispute" means a dispute arising out of— 15

(i) ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents;

(ii) export or import of merchandise or services;

(iii) issues relating to admiralty and maritime law; 20

(iv) transactions relating to aircraft, aircraft engines, aircraft equipment and helicopters, including sales, leasing and financing of the same;

(v) carriage of goods;

(vi) construction and infrastructure contracts, including tenders;

(vii) agreements relating to immovable property used exclusively in trade or commerce; 25

(viii) franchising agreements;

(ix) distribution and licensing agreements;

(x) management and consultancy agreements;

(xi) joint venture agreements; 30

(xii) shareholders agreements;

(xiii) subscription and investment agreements pertaining to the services industry including outsourcing services and financial services;

(xiv) mercantile agency and mercantile usage;

(xv) partnership agreements; 35

(xvi) technology development agreements;

(xvii) intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design, domain names, geographical indications and semiconductor integrated circuits;

(xviii) agreements for sale of goods or provision of services; 40

(xix) exploitation of oil and gas reserves or other natural resources including electromagnetic spectrum;

(xx) insurance and re-insurance;

(xxi) contracts of agency relating to any of the above, or relating to such other commercial disputes as may be prescribed; and

(xxii) such other commercial disputes as may be prescribed.

5 *Explanation.*—A commercial dispute shall not cease to be a commercial dispute merely because—

(a) it also involves action for recovery of immovable property or for realisation of monies out of immovable property given as security or involves any other relief pertaining to immovable property;

10 (b) one of the contracting parties is the State or any of its agencies or instrumentalities, or a private body carrying out public functions;

(d) "Commercial Division" means the Commercial Division in a High Court constituted under sub-section (2) of section 3;

15 (e) "District Judge" shall have the same meaning as assigned to it in clause (a) of article 236 of the Constitution of India;

(f) "document" means any matter expressed or described upon any substance by means of letters, figures or marks, or electronic means, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter;

20 (g) "notification" means a notification published in the Official Gazette and the expression "notify" with its cognate meanings and grammatical variations shall be construed accordingly;

(h) "prescribed" means prescribed by the rules made by the Central Government;

25 (i) "Schedule" means the Schedule appended to the Act; and

(j) "Specified Value", in relation to a commercial dispute, shall mean the value of the subject matter in respect of a suit as determined in accordance with section 12 which shall not be less than one crore rupees or such higher value, as may be prescribed.

30 (2) The words and expressions used and not defined in this Act but defined in the Code of Civil Procedure, 1908 and the Indian Evidence Act, 1872, shall have the same meanings respectively assigned to them in that Code and the Act.
5 of 1908.
1 of 1872.

CHAPTER II

35 CONSTITUTION OF COMMERCIAL COURTS, COMMERCIAL DIVISIONS AND COMMERCIAL APPELLATE DIVISIONS

40 **3.** (1)(a) In all States or Union territories where the High Court does not have ordinary original civil jurisdiction, the State Government may, after consultation with the concerned High Court, by notification, constitute such number of Commercial Courts, as it may deem necessary, for the purpose of exercising the jurisdiction conferred on those Courts by the Act.

Constitution of Commercial Courts, Commercial Divisions and Commercial Appellate Divisions.

(b) In all States or Union territories where the High Court has ordinary original civil jurisdiction, the State Government may, after consultation with the concerned High Court, by notification, constitute such number of Commercial Courts, as it may deem necessary, for the purpose of exercising the jurisdiction conferred on those Courts by the Act.

45 (c) The Commercial Courts as referred to in clause (a) shall consist of such number of judges as may be appointed in accordance with the provisions of section 5.

(d) The Commercial Courts as referred to in clause (b) shall consist of such number of judges as may be appointed in accordance with the provisions of section 5.

(2)(a) In all High Courts having ordinary original civil jurisdiction, the State Government may, after consultation with the concerned High Court, by notification, constitute a "Commercial Division" of that High Court.

5

(b) The Commercial Division of High Court shall consist of such number of judges as may be determined from time to time by the Chief Justice of such High Court.

(3)(a) The State Government shall, immediately after issuing notification under subsections (1) and (2), constitute a "Commercial Appellate Division" of that High Court.

(b) The Commercial Appellate Division shall have one or more Division Benches as may be determined from time to time by the Chief Justice of such High Court.

10

Nomination of judges to Commercial Division and Commercial Appellate Divisions in High Courts.

4. (1) The Chief Justice of the concerned High Court shall nominate such number of Judges of the High Court as required to be Judges of the Commercial Division or Commercial Appellate Division of such High Court.

(2) The Judges to be nominated for the Commercial Division or the Commercial Appellate Division shall have experience in dealing with commercial disputes and such nomination shall be for a period of two years or such other period as may be determined by the Chief Justice of the concerned High Court.

15

Appointment, qualification, terms and conditions of judges to Commercial Courts.

5. (1) The Judge of a Commercial Court shall be appointed by the concerned High Court in such manner as may be prescribed.

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(2) Where more than one judge is appointed to a Commercial Court, the senior most judge shall be designated as "Principal Judge" and shall have such powers and functions in relation to the Commercial Court, as the Principal District Judge has for the purposes of the administration of the District Court.

(3) No person shall be eligible to be appointed as a Judge of a Commercial Court unless such person—

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(a) is qualified to be appointed as a District Judge and has experience in dealing the matters relating to commercial disputes; or

(b) has for at least seven years held a judicial office in the territory of India or the office of a member of a tribunal or any post under the Union or a State requiring special knowledge of law.

30

(4) The terms and other conditions of service of the judges of the Commercial Court shall be such as may be prescribed:

Provided that such terms and conditions of service for judges of the Commercial Court shall not be less than that of the post of the Principal District Judge or any other post in the judicial service equivalent to the Principal District Judge in that State or Union territory, as the case may be.

35

Jurisdiction of Commercial Court.

6. The Commercial Court shall have jurisdiction to try all suits and applications relating to a commercial dispute of a Specified Value arising out of the entire territory of the State over which it has been vested territorial jurisdiction.

40

Explanation.—For the purposes of this section, a commercial dispute shall be considered to arise out of the entire territory of the State over which a Commercial Court has been vested jurisdiction, if the suit or application relating to such commercial dispute has been instituted as per the provisions of sections 16 to 20 of the Code of Civil Procedure, 1908.

45 5 of 1908.

Jurisdiction of Commercial Divisions of High Court.

7. All suits and applications relating to commercial disputes of a Specified Value filed in a High Court having ordinary original civil jurisdiction shall be heard and disposed of by the Commercial Division of that High Court:

Provided that all suits and applications relating to commercial disputes, stipulated by an Act to lie in a court not inferior to a District Court, and filed on the original side of the High Court, shall be heard and disposed of by the Commercial Division of the High Court:

5 Provided further that all suits and applications transferred to the High Court by
 16 of 2000. virtue of sub-section (4) of section 22 of the Designs Act, 2000 or section 104 of the
 39 of 1970. Patents Act, 1970 shall be heard and disposed of by the Commercial Division of the
 High Court in all the areas over which the High Court exercises ordinary original civil
 jurisdiction.

10 **8.** Notwithstanding anything contained in any other law for the time being in
 force, no civil revision application or petition shall be entertained against any
 interlocutory order of a Commercial Court, including an order on the issue of jurisdiction,
 and any such challenge, subject to the provisions of section 13, shall be raised only in
 an appeal against the decree of the Commercial Court.

Bar against
 revision
 application or
 petition
 against an
 interlocutory
 order.

5 of 1908. 15 **9. (1)** Notwithstanding anything contained in the Code of Civil Procedure, 1908,
 in the event that a counter-claim filed in a suit before a civil court relating to a commercial
 dispute is of Specified Value, such suit shall be transferred by the civil court to the
 Commercial Court or Commercial Division, as the case may be, having territorial
 jurisdiction over such suit.

Transfer of suit
 if counter-claim
 in a commercial
 dispute is of
 Specified
 Value.

20 (2) In the event that such suit is not transferred in the manner contemplated in
 sub-section (1), the Commercial Appellate Division of the High Court exercising
 supervisory jurisdiction over the civil court in question may, on the application of any
 of the parties to the suit, withdraw such suit pending before the civil court and transfer
 the same for trial or disposal to the Commercial Court or Commercial Division or, as the
 25 case may be, having territorial jurisdiction over such suit, and such order of transfer
 shall be final and binding.

10. Where the subject matter of an arbitration is a commercial dispute of a Specified
 Value and—

Jurisdiction in
 respect of
 arbitration
 matters.

30 (1) if such arbitration is an international commercial arbitration, all
 applications or appeals arising out of such arbitration under the provisions of the
 26 of 1996. Arbitration and Conciliation Act, 1996 that have been filed in a High Court, shall
 be heard and disposed of by the Commercial Appellate Division where such
 Commercial Appellate Division has been constituted in such High Court;

35 (2) if such arbitration is other than an international commercial arbitration,
 26 of 1996. all applications or appeals arising out of such arbitration under the provisions of
 the Arbitration and Conciliation Act, 1996 that have been filed on the original side
 of the High Court, shall be heard and disposed of by the Commercial Appellate
 Division where such Commercial Appellate Division has been constituted in such
 High Court;

40 (3) if such arbitration is other than an international commercial arbitration,
 26 of 1996. all applications or appeals arising out of such arbitration under the provisions of
 the Arbitration and Conciliation Act, 1996 that would ordinarily lie before any
 principal civil court of original jurisdiction in a district (not being a High Court)
 shall be filed, heard and disposed of by the Commercial Court exercising territorial
 45 jurisdiction over such arbitration where such Commercial Court has been
 constituted.

11. Notwithstanding anything contained in this Act, a Commercial Court or a
 Commercial Division shall not entertain or decide any suit, application or proceedings
 relating to any commercial dispute in respect of which the jurisdiction of the civil court
 50 is either expressly or impliedly barred under any other law for the time being in force.

Bar of
 jurisdiction of
 Commercial
 Courts and
 Commercial
 Divisions.

CHAPTER III

SPECIFIED VALUE

Determination of Specified Value.

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

(a) where the relief sought in a suit or application is for recovery of money, the money sought to be recovered in the suit or application inclusive of interest, if any, computed up to the date of filing of the suit or application, as the case may be, shall be taken into account for determining such specified value; 5

(b) where the relief sought in a suit, appeal or application relates to movable property or to a right therein, the market value of the movable property as on the date of filing of the suit, appeal or application, as the case may be, shall be taken into account for determining such specified value; 10

(c) where the relief sought in a suit, appeal or application relates to immovable property or to a right therein, the market value of the immovable property, as on the date of filing of the suit, appeal or application, as the case may be, shall be taken into account for determining specified value; 15

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

(e) where the counter-claim is raised in any suit, appeal or application, the value of the subject matter of the commercial dispute in such counter-claim as on the date of the counter-claim shall be taken into account. 20

(2) The aggregate value of the claim and counter-claim, if any, as set out in the statement of claim and the counter-claim, if any, in an arbitration of a commercial dispute shall be the basis for determining whether such arbitration is subject to the jurisdiction of Commercial Court, Commercial Division or Commercial Appellate Division, as the case may be. 25

(3) No appeal or civil revision application under section 115 of the Code of Civil Procedure, 1908, as the case may be, shall lie from an order of a Commercial Court or Commercial Division finding that it has jurisdiction to hear a commercial dispute under this Act. 5 of 1908.

CHAPTER IV

30

APPEAL

Appeals from decrees of Commercial Courts and Commercial Divisions.

13. (1) Any person aggrieved by the decision of the Commercial Court or Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of judgment or order, as the case may be: 35

Provided that an appeal shall lie from such orders passed by a Commercial Court or Commercial Division that are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 as amended by this Act and section 37 of the Arbitration and Conciliation Act, 1996. 5 of 1908. 26 of 1996.

(2) Notwithstanding anything contained in any other law for the time being in force or Letters Patent of a High Court, no appeal shall lie from any order or decree of a Commercial Court or Commercial Division otherwise than in accordance with the provisions of this Act. 40

Appeals or writ petitions in case of certain Tribunals.

14. An appeal or a writ petition filed in a High Court against the orders of the,—

(a) Competition Appellate Tribunal;

(b) Debts Recovery Appellate Tribunal; 45

- (c) Intellectual Property Appellate Board;
- (d) Company Law Board or the National Company Law Tribunal;
- (e) Securities Appellate Tribunal;
- (f) Telecom Disputes Settlement and Appellate Tribunal,

5 shall be heard and disposed of by the Commercial Appellate Division of such High Court, if the subject matter of such appeal or writ petition relates to a commercial dispute.

15. The Commercial Appellate Division shall endeavour to dispose of appeals filed before it within a period of six months from the date of filing of such appeal.

Expeditious disposal of appeals.

CHAPTER V

10 TRANSFER OF PENDING SUITS

26 of 1996. **16.** (1) All suits and applications, including applications under the Arbitration and Conciliation Act, 1996, relating to a commercial dispute of a Specified Value pending in a High Court where a Commercial Division has been constituted, shall be transferred to the Commercial Division.

Transfer of pending cases.

15 26 of 1996. (2) All suits and applications, including applications under the Arbitration and Conciliation Act, 1996, relating to a commercial dispute of a Specified Value pending in any civil court in any district or area in respect of which a Commercial Court has been constituted, shall be transferred to such Commercial Court:

20 Provided that no suit or application where the final judgment has been reserved by the Court prior to the constitution of the Commercial Division or the Commercial Court shall be transferred either under sub-section (1) or sub-section (2).

26 of 1996. (3) Where any suit or application, including an application under the Arbitration and Conciliation Act, 1996, relating to a commercial dispute of Specified Value shall stand transferred to the Commercial Division or Commercial Court under sub-section (1) or section (2), the provisions of this Act shall apply to those procedures that were not complete at the time of transfer.

30 5 of 1908. (4) The Commercial Division or Commercial Court, as the case may be, may hold case management hearings in respect of such transferred suit or application in order to prescribe new timelines or issue such further directions as may be necessary for a speedy and efficacious disposal of such suit or application in accordance with Order XIVA of the Code of Civil Procedure, 1908:

5 of 1908. Provided that the proviso to sub-rule (1) of rule 1 of Order V of the Code of Civil Procedure, 1908 shall not apply to such transferred suit or application and the court may, in its discretion, prescribe a new time period within which the written statement shall be filed.

35 40 (5) In the event that such suit or application is not transferred in the manner specified in sub-section (1), (2) or (3), the Commercial Appellate Division of the High Court may, on the application of any of the parties to the suit, withdraw such suit or application from the court before which it is pending and transfer the same for trial or disposal to the Commercial Division or Commercial Court, as the case may be, having territorial jurisdiction over such suit, and such order of transfer shall be final and binding.

CHAPTER VI

AMENDMENTS TO THE PROVISIONS OF THE CODE OF CIVIL PROCEDURE, 1908

5 of 1908. **17.** (1) The provisions of the Code of Civil Procedure, 1908 shall, in their application to any suit in respect of a commercial dispute of a Specified Value, stand amended in the manner as specified in the Schedule.

Amendments to Code of Civil Procedure, 1908 in its application to commercial disputes.

(2) The Commercial Division and Commercial Court shall follow the provisions of the Code of Civil Procedure, 1908, as amended by this Act, in the trial of a suit in respect of a commercial dispute of a Specified Value. 5 of 1908.

(3) Where any provision of any rule of the jurisdictional High Court or any amendment to the Code of Civil Procedure, 1908, by the State Government is in conflict with the provisions of the Code of Civil Procedure, 1908, as amended by this Act, the provisions of the Code of Civil Procedure as amended by this Act shall prevail. 5 5 of 1908.

CHAPTER VII

MISCELLANEOUS

Collection and disclosure of data by Commercial Courts, Commercial Divisions and Commercial Appellate Divisions. 18. The Statistical data regarding the number of suits, applications, appeals or writ petitions filed before the Commercial Court, Commercial Division, or Commercial Appellate Division, as the case may be, the pendency of such cases, the status of each case, and the number of cases disposed of, shall be maintained and updated every month by each Commercial Court, Commercial Division, Commercial Appellate Division and shall be published on the website of the relevant High Court. 10 15

Power of High Court to issue directions. 19. The High Court may, by notification, issue practice directions to supplement the provisions of Chapter II of this Act or the Code of Civil Procedure, 1908 in so far as such provisions apply to the hearing of commercial disputes of a Specified Value. 5 of 1908.

Infrastructure facilities 20. The State Government shall provide necessary infrastructure to facilitate the working of a Commercial Court or a Commercial Division of a High Court. 20

Training and continuous educations 21. The State Government may, in consultation with the High Court, establish necessary facilities providing for training of Judges who may be appointed to the Commercial Court, Commercial Division or the Commercial Appellate Division in a High Court.

Act to have overriding effect. 22. Save as otherwise provided, the provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law for the time being in force other than this Act 25

Power of Central Government to make rules. 23. (1) The Central Government may, by notification, make rules for the purpose of carrying out the provisions of this Act.

(2) In particular and without prejudice to the provisions contained in sub-section (1), such rules may provide for all or any of the following matters, namely:— 30

(a) the manner of appointment of Judge of a Commercial Court under sub-section (1) of section 5;

(b) the terms and conditions of service of the Judges of the Commercial Court under sub-section (4) of section 5; and 35

(c) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made by rules.

Laying of rules and notifications before Parliament. 24. Every rule made and every notification issued under this Act shall be laid, as soon as may be after it is made or issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rules or notifications, as the case may be, or both Houses agree that the rules or notifications, as the case may be, should not be made or issued, the rule or notification, as the case may be, shall thereafter have effect only in such modified form or be of no effect, as 40 45

the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification, as the case may be.

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

Power to remove difficulties.

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

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

THE SCHEDULE

(See section 17)

5 of 1908.

1. In section 26 of the Code of Civil Procedure, 1908 (hereafter referred to as the Code), in sub-section (2), the following proviso shall be inserted, namely:—

Amendment of section 26.

"Provided that such an affidavit shall be in the form and manner as prescribed under Order VI, rule 15A".

2. For section 35 of the Code, the following section shall be substituted, namely:—

Substitution of new section for section 35.

"35. (1) In relation to any commercial dispute, the Court, notwithstanding anything costs contained in any other law for the time being in force or rule, has the discretion to determine:

Costs.

- (a) whether costs are payable by one party to another;
- (b) the quantum of those costs; and
- (c) when they are to be paid.

Explanation.—For the purpose of clause (a), the expression "costs" shall mean reasonable costs relating to—

- (i) the fees and expenses of the witnesses incurred;
- (ii) legal fees and expenses incurred;
- (iii) any other expenses incurred in connection with the proceedings.

(2) If the Court decides to make an order for payment of costs, the general rule is that the unsuccessful party shall be ordered to pay the costs of the successful party:

Provided that the Court may make an order deviating from the general rule for reasons to be recorded in writing.

Illustration

The Plaintiff, in his suit, seeks a money decree for breach of contract, and damages. The Court holds that the Plaintiff is entitled to the money decree. However, it returns a finding that the claim for damages is frivolous and vexatious.

In such circumstances the Court may impose costs on the Plaintiff, despite the Plaintiff being the successful party, for having raised frivolous claims for damages.

(3) In making an order for the payment of costs, the Court shall have regard to the following circumstances, including—

- (a) the conduct of the parties;
- (b) whether a party has succeeded on part of its case, even if that party has not been wholly successful;

(c) whether the party had made a frivolous counter claim leading to delay in the disposal of the case;

(d) whether any reasonable offer to settle is made by a party and unreasonably refused by the other party; and

(e) whether the party had made a frivolous claim and instituted a vexatious proceeding wasting the time of the Court. 5

(4) The orders which the Court may make under this provision include an order that a party must pay—

(a) a proportion of another party's costs;

(b) a stated amount in respect of another party's costs; 10

(c) costs from or until a certain date;

(d) costs incurred before proceedings have begun;

(e) costs relating to particular steps taken in the proceedings;

(f) costs relating to a distinct part of the proceedings; and

(g) interest on costs from or until a certain date. 15

Amendment of section 35A.

3. In section 35A of the Code, sub-section (2) shall be omitted.

Amendment of First Schedule.

4. In the First Schedule to the Code,—

(A) in the Order V, in rule 1, in sub-rule (I), for the second proviso, the following proviso shall be substituted, namely:—

"Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons. On expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record."; 20 25

(B) in Order VI,—

(i) after rule 3, the following rule shall be inserted, namely:—

Forms of pleading in Commercial Courts.

"3A. In a commercial dispute, where forms of pleadings have been prescribed under the High Court rules or Practice Directions made for the purposes of such commercial disputes, pleadings shall be in such forms."; 30

(ii) after rule 15, the following rule shall be inserted, namely:—

Verification of pleadings in a commercial dispute.

"15A. (I) Notwithstanding anything contained in rule 15, every pleading in a Commercial Dispute shall be verified by an affidavit in the manner and form prescribed in the Appendix to this Schedule. 35

(2) An affidavit under sub-rule (I) above shall be signed by the party or by one of the parties to the proceedings, or by any other person on behalf of such party or parties who is proved to the satisfaction of the Court to be acquainted with the facts of the case and who is duly authorised by such party or parties. 40

(3) Where a pleading is amended, the amendments must be verified in the form and manner referred to in sub-rule (I) unless the Court orders otherwise.

(4) Where a pleading is not verified in the manner provided under sub-rule (1), the party shall not be permitted to rely on such pleading as evidence or any of the matters set out therein.

5 (5) The Court may strike out a pleading which is not verified by a Statement of Truth, namely, the affidavit set out in the Appendix to this Schedule.";

(C) in Order VII, after rule 2, the following rule shall be inserted, namely:—

"2A. (1) Where the plaintiff seeks interest, the plaint shall contain a statement to that effect along with the details set out under sub-rules (2) and (3).

Where interest is sought in the suit.

10 (2) Where the plaintiff seeks interest, the plaint shall state whether the plaintiff is seeking interest in relation to a commercial transaction within the meaning of section 34 of the Code of Civil Procedure, 1908 and, furthermore, if the plaintiff is doing so under the terms of a contract or under an Act, in which case the Act is to be specified in the plaint; or on some other basis and shall state the basis of that.

5 of 1908.

15 (3) The pleadings shall also state—

(a) the rate at which interest is claimed;

(b) the date from which it is claimed;

(c) the date to which it is calculated;

20 (d) the total amount of interest claimed to the date of calculation; and

(e) the daily rate at which interest accrues after that date.";

(D) in Order VIII,—

25 (i) in rule 1, for the proviso, the following proviso shall be substituted, namely:—

"Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons. On expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.";

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35 (ii) after rule 3, the following rule shall be inserted, namely:—

"3A. (1) Denial shall be in the manner provided in sub-rules (2), (3), (4) and (5) of this rule.

Denial by the defendant in suits before the Commercial Division of the High Court or the Commercial Court.

40 (2) The defendant in his written statement shall state which of the allegations in the particulars of plaint he denies, which allegations he is unable to admit or deny, but which he requires the plaintiff to prove, and which allegations he admits.

45 (3) Where the defendant denies an allegation of fact in a plaint, he must state his reasons for doing so and if he intends to put forward a different version of events from that given by the plaintiff, he must state his own version.

.(4) If the defendant disputes the jurisdiction of the Court he must state the reasons for doing so, and if he is able, give his own statement as to which Court ought to have jurisdiction.

(5) If the defendant disputes the plaintiff's valuation of the suit, he must state his reasons for doing so, and if he is able, give his own statement of the value of the suit." ; 5

(iii) in rule 5, in sub-rule (I), after the first proviso, the following proviso shall be inserted, namely: —

"Provided further, that every allegation of fact in the plaint, if not denied in the manner provided under rule 3A of this Order, shall be taken to be admitted except as against a person under disability." ; 10

(iv) in rule 10, after the first proviso, the following proviso shall be inserted, namely: —

"Provided further that no Court shall make an order to extend the time provided under rule 1 of this Order for filing of the written statement." ; 15

(E). for Order XI of the Code, the following Order shall be substituted, namely:—

"ORDER XI

DISCLOSURE, DISCOVERY AND INSPECTION OF DOCUMENTS IN SUITS BEFORE THE COMMERCIAL DIVISION OF A HIGH COURT OR A COMMERCIAL COURT

Disclosure and Discovery of documents.

1. (I) Plaintiff shall file a list of all documents and photocopies of all documents, in its power, possession, control or custody, pertaining to the suit, along with the plaint, including:— 20

(a) The documents referred to and relied on by the plaintiff in the plaint;

(b) The documents relating to any matter in question in the proceedings, in the power, possession, control or custody of the plaintiff, as on the date of filing the plaint, irrespective of whether the same is in support of or adverse to the plaintiff's case; 25

(c) Nothing in this rule shall apply to documents produced by plaintiffs and relevant only—

(i) for the cross-examination of the defendant's witnesses, or

(ii) in answer to any case setup by the defendant subsequent to the filing of the plaint, or 30

(iii) handed over to a witness merely to refresh his memory.

(2) The list of documents filed with the plaint shall specify whether the documents in the power, possession, control or custody of the plaintiff are originals, office copies or photocopies. The list shall also set out in brief, details of parties to each document, mode of execution, issuance or receipt and line of custody of each document. 35

(3) The plaint shall contain a declaration on oath from the plaintiff that all documents in the power, possession, control or custody of the plaintiff, pertaining to the facts and circumstances of the proceedings initiated by him have been disclosed and copies thereof annexed with the plaint, and that the plaintiff does not have any other documents in its power, possession, control or custody. 40

Explanation.—A declaration on oath under this sub-rule shall be contained in the Statement of Truth as set out in the Appendix.

(4) In case of urgent filings, the plaintiff may seek leave to rely on additional documents, as part of the above declaration on oath and subject to grant of such leave by Court, the plaintiff shall file such additional documents in Court, within thirty days of filing the suit, along with a declaration on oath that the plaintiff has produced all documents in its power, possession, control or custody, pertaining to the facts and circumstances of the proceedings initiated by the plaintiff and that the plaintiff does not have any other documents, in its power, possession, control or custody.

(5) The plaintiff shall not be allowed to rely on documents, which were in the plaintiff's power, possession, control or custody and not disclosed along with plaint or within the extended period set out above, save and except by leave of Court. Such leave shall be granted only upon the plaintiff establishing reasonable cause for non-disclosure along with the plaint.

(6) The plaintiff shall set out details of documents, which the plaintiff believes to be in the power, possession, control or custody of the defendant and which the plaintiff wishes to rely upon and seek leave for production thereof by the said defendant.

(7) The defendant shall file a list of all documents and photocopies of all documents, in its power, possession, control or custody, pertaining to the suit, along with the written statement or with its counter claim if any, including—

(a) the documents referred to and relied on by the defendant in the written statement;

(b) the documents relating to any matter in question in the proceeding in the power, possession, control or custody of the defendant, irrespective of whether the same is in support of or adverse to the defendant's defense;

(c) nothing in this rule shall apply to documents produced by defendants and relevant only—

(i) for the cross-examination of the plaintiff's witnesses,

(ii) in answer to any case setup by the plaintiff subsequent to the filing of the plaint, or

(iii) handed over to a witness merely to refresh his memory.

(8) The list of documents filed with the written statement or counter claim shall specify whether the documents, in the power, possession, control or custody of the defendant, are originals, office copies or photocopies. The list shall also set out in brief, details of parties to each document being produced by the defendant, mode of execution, issuance or receipt and line of custody of each document;

(9) The written statement or counter claim shall contain a declaration on oath made by the deponent that all documents in the power, possession, control or custody of the defendant, save and except for those set out in sub-rule (7) (c)(iii), pertaining to the facts and circumstances of the proceedings initiated by the plaintiff or in the counter claim, have been disclosed and copies thereof annexed with the written statement or counter claim and that the defendant does not have in its power, possession, control or custody, any other documents;

(10) Save and except for sub-rule (7) (c)(iii), defendant shall not be allowed to rely on documents, which were in the defendant's power, possession, control or custody and not disclosed along with the written statement or counter claim, save and except by leave of Court. Such leave shall be granted only upon the defendant establishing reasonable cause for non - disclosure along with the written statement or counter claim; 5

(11) The written statement or counter claim shall set out details of documents in the power, possession, control or custody of the plaintiff, which the defendant wishes to rely upon and which have not been disclosed with the plaint, and call upon the plaintiff to produce the same;

(12) Duty to disclose documents, which have come to the notice of a party, shall continue till disposal of the suit. 10

Discovery by Interrogatories.

2. (1) In any suit the plaintiff or defendant by leave of the court may deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties, and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such persons is required to answer: 15

Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose: Provided also that interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross examination of a witness. 20

(2) On an application for leave to deliver interrogatories, the particular interrogatories proposed to be delivered shall be submitted to the court, and that court shall decide within seven days from the day of filing of the said application, in deciding upon such application, the court shall take into account any offer, which may be made by the party sought to be interrogated to deliver particulars, or to make admissions, or to produce documents relating to the matters in question, or any of them, and leave shall be given as to such only of the interrogatories submitted as the court shall consider necessary either for disposing fairly of the suit or for saving costs. 25

(3) In adjusting the costs of the suit inquiry shall at the instance of any party be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing officer or of the court, either with or without an application for inquiry, that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be paid in any event by the party in fault. 30

(4) Interrogatories shall be in the form provided in Form No. 2 in Appendix C to the Code of Civil Procedure, 1908, with such variations as circumstances may require. 35 5 of 1908.

(5) Where any party to a suit is a corporation or a body of persons, whether incorporated or not, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply for an order allowing him to deliver interrogatories to any member or officer of such corporation or body, and an order may be made accordingly. 40

(6) Any objection to answering any interrogatory on the ground that it is scandalous or irrelevant or not exhibited *bona fide* for the purpose of the suit, or that the matters inquired into are not sufficiently material at that stage, or on the ground of privilege or any other ground may be taken in the affidavit in answer. 45

(7) Any interrogatories may be set aside on the ground that they have been exhibited unreasonably or vexatiously, or struck out on the ground that they are prolix, oppressive, unnecessary or scandalous and any application for this purpose may be made within seven days after service of the interrogatories.

(8) Interrogatories shall be answered by affidavit to be filed within ten days, or within such other time as the court may allow.

5 of 1908. (9) An affidavit in answer to interrogatories shall be in the form provided in Form No, 3 in Appendix C to the Code of Civil Procedure, 1908, with such variations as circumstances may require.

(10) No exceptions shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the court.

(11) Where any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the court for an order requiring him to answer, or to answer further, as the case may be. And an order may be made requiring him to answer, or to answer further, either affidavit or by viva voce examination, as the court may direct.

3. (1) All parties shall complete inspection of all documents disclosed within thirty days of the date of filing of the written statement or written statement to the counter claim, whichever is later. The Court may extend this time limit upon application at its discretion, but not beyond thirty days in any event. Inspection.

(2) Any party to the proceedings may seek directions from the Court, at any stage of the proceedings, for inspection or production of documents by the other party, of which inspection has been refused by such party or documents have not been produced despite issuance of a notice to produce;

(3) Order in such application shall be disposed off within thirty days of filing such application, including filing replies and rejoinders (if permitted by Court) and hearing;

(4) If the above application is allowed, inspection and copies thereof shall be furnished to the party seeking it, within five days of such order.

(5) No party shall be permitted to rely on a document, which it had failed to disclose or of which inspection has not been given, save and except with leave of Court.

(6) The court may impose exemplary costs against a defaulting party, who wilfully or negligently failed to disclose all documents pertaining to a suit or essential for a decision therein and which are in their power, possession, control or custody or where a Court holds that inspection or copies of any documents had been wrongfully or unreasonably withheld or refused.

4. (1) Each party shall submit a statement of admissions or denials of all documents disclosed and of which inspection has been completed, within fifteen days of the completion of inspection or any later date as fixed by the Court. Admission and Denial of Documents.

(2) The statement of admissions and denials shall set out explicitly, whether such party was admitting or denying:

(a) Correctness of contents of a document;

(b) Existence of a document;

(c) Execution of a document;

(d) Issuance or receipt of a document;

(e) Custody of a document;

Explanation.—A statement of admission or denial of the existence of a document made in accordance with rule 4(2)(b) of the modified Order XI will include the admission or denial of the contents of a document.

(3) Each party shall set out reasons for denying a document under any of the above grounds. Bare and unsupported denials shall not be deemed to be denials of a document and proof of such documents may then be dispensed with at the discretion of the Court.

(4) Any party may however submit bare denials for third party documents of which the party denying does not have any personal knowledge of, and to which the party denying is not a party to in any manner whatsoever;

(5) An Affidavit in support of the statement of admissions and denials shall be filed confirming the correctness of the contents of the statement. 5

(6) In the event that the Court holds that any party has unduly refused to admit a document under any of the above criteria, - costs (including exemplary costs) for deciding on admissibility of a document may be imposed by the Court on such party.

(7) The court may pass orders with respect to admitted documents including for waiver of further proof thereon or rejection of any documents. 10

Production of documents.

5. (1) Any party to a proceeding may seek or the Court may order, at any time during the pendency of any suit, production by any party or person, of such documents in the possession or power of such party or person, relating to any matter in question in such suit.

(2) Notice to produce such document shall be issued in the form provided in Form No. 7 in Appendix C to the Code of Civil Procedure, 1908. 15 5 of 1908.

(3) Any party or person to whom such notice to produce is issued shall be given not less than seven days and not more than fifteen days to produce such document or to answer to their inability to produce such document.

(4) The Court may draw an adverse inference against a party refusing to produce such document after issuance of a notice to produce and where sufficient reasons for such non-production are not given and order costs. 20

Electronic records.

6. (1) In case of disclosures and inspection of electronic records (as defined in the Information Technology Act, 2000), furnishing of printouts shall be sufficient compliance of the above provisions. 21 of 2000. 25

(2) At the discretion of the parties or where required (when parties wish to rely on audio or video content), copies of electronic records may be furnished in electronic form either in addition to or in lieu of printouts.

(3) Where Electronic Records form part of documents disclosed, the declaration on oath to be filed by a party shall specify— 30

(a) the parties to such electronic record;

(b) the manner in which such electronic record was produced and by whom;

(c) the dates and time of preparation or storage or issuance or receipt of each such electronic record;

(d) the source of such electronic record and date and time when the electronic record was printed; 35

(e) in case of email ids, details of ownership, custody and access to such email ids;

(f) in case of documents stored on a computer or computer resource (including on external servers or cloud), details of ownership, custody and access to such data on the computer or computer resource; 40

(g) deponent's knowledge of contents and correctness of contents;

(h) whether the computer or computer resource used for preparing or receiving or storing such document or data was functioning properly or in case of malfunction that such malfunction did not affect the contents of the document stored; 45

(i) that the printout or copy furnished was taken from the original computer or computer resource;

(4) The parties relying on printouts or copy in electronic form, of any electronic records, will not be required to give inspection of electronic records, provided a declaration is made by such party that each such copy, which has been produced, has been made from the original electronic record.

5 (5) The Court may give directions for admissibility of electronic records at any stage of the proceedings.

(6) Any party may seek directions from the Court and the Court may of its motion issue directions for submission of further proof of any electronic record including metadata or logs before admission of such electronic record.

10 5 of 1908. 7. For removal of doubt, it is hereby clarified that rule 1 of Order XIII, rule 14 of Order VII and rule 1A of order VIII of the Code of Civil Procedure, 1908 shall not apply to suits or applications before the Commercial Divisions of High Court or Commercial Courts."

Certain provisions of the Code of Civil Procedure, 1908 not to apply.
Insertion of Order XIII-A.

5. After Order XIII of the Code, the following Order shall be inserted, namely:—

"ORDER XIII-A

SUMMARY JUDGEMENT

15

1. (1) This Order sets out the procedure by which Courts may decide a claim pertaining to any Commercial Dispute without recording oral evidence.

Scope of and classes of suits to which this Order applies.

(2) For the purposes of this Order, the word "claim" shall include—

(a) part of a claim;

20

(b) any particular question on which the claim (whether in whole or in part) depends; or

(c) a counter-claim, as the case may be.

25 (3) Notwithstanding anything to the contrary, an application for summary judgment under this Order shall not be made in a suit in respect of any Commercial Dispute that is originally filed as a summary suit under Order XXXVII.

2. An applicant may apply for summary judgment at any time after summons has been served on the defendant:

Stage for application for summary judgment.

Provided that, no application for summary judgment may be made by such applicant after the Court has framed the issues in respect of the suit.

30 3. The Court may give a summary judgment against a plaintiff or defendant on a claim if it considers that—

Grounds for summary judgment.

(a) the plaintiff has no real prospect of succeeding on the claim or the defendant has no real prospect of successfully defending the claim, as the case may be; and

35 (b) there is no other compelling reason why the claim should not be disposed of before recording of oral evidence.

4. (1) An application for summary judgment to a Court shall, in addition to any other matters the applicant may deem relevant, include the matters set forth in clauses (a) to (e) mentioned hereunder:—

Procedure.

40 (a) the application must contain a statement that it is an application for summary judgment made under this Order;

(b) the application must precisely:

(i) disclose all material facts; and

(ii) identify the point of law, if any;

(c) in the event the applicant seeks to rely upon any documentary evidence, the applicant must:— 5

(i) include such documentary evidence in its application; and

(ii) identify the relevant content of such documentary evidence on which the applicant relies;

(d) the application must state the reason why there are no real prospects of succeeding on the claim or defending the claim, as the case may be; 10

(e) the application must state what relief the applicant is seeking and briefly state the grounds for seeking such relief.

(2) Where a hearing for summary judgment is fixed, the respondent must be given at least thirty days' notice of:—

(a) the date fixed for the hearing; and 15

(b) the claim that is proposed to be decided by the Court at such hearing.

(3) The respondent may, within thirty days of the receipt of notice of application of summary judgment or notice of hearing (whichever is earlier), file a reply addressing the matters set forth in clauses (a) to (f) mentioned hereunder in addition to any other matters that the respondent may deem relevant:— 20

(a) the reply must precisely—

(i) disclose all material facts;

(ii) identify the point of law, if any; and

(iii) state the reasons why the relief sought by the applicant should not be granted; 25

(b) in the event the respondent seeks to rely upon any documentary evidence in its reply, the respondent must—

(i) include such documentary evidence in its reply; and

(ii) identify the relevant content of such documentary evidence on which the respondent relies; 30

(c) the reply must state the reason why there are real prospects of succeeding on the claim or defending the claim, as the case may be;

(d) the reply must concisely state the issues that should be framed for trial;

(e) the reply must identify what further evidence shall be brought on record at trial that could not be brought on record at the stage of summary judgment; and 35

(f) the reply must state why, in light of the evidence or material on record if any, the Court should not proceed to summary judgment.

5. (1) Notwithstanding anything in this Order, if the respondent in an application for summary judgment wishes to rely on additional documentary evidence during the hearing, the respondent must:—

Evidence for hearing of summary judgment.

(a) file such documentary evidence; and

5 (b) serve copies of such documentary evidence on every other party to the application at least fifteen days prior to the date of the hearing.

(2) Notwithstanding anything in this Order, if the applicant for summary judgment wishes to rely on documentary evidence in reply to the defendant's documentary evidence, the applicant must:—

10 (a) file such documentary evidence in reply; and

(b) serve a copy of such documentary evidence on the respondent at least five days prior to the date of the hearing.

(3) Notwithstanding anything to the contrary, sub-rules (1) and (2) shall not require documentary evidence to be:—

15 (a) filed if such documentary evidence has already been filed; or

(b) served on a party on whom it has already been served.

6. (1) On an application made under this Order, the Court may make such orders that it may deem fit in its discretion including the following:—

Orders that may be made by the Court.

(a) judgment on the claim;

20 (b) conditional order in accordance with rule 7 mentioned hereunder;

(c) dismissing the application;

(d) dismissing part of the claim and a judgment on part of the claim that is not dismissed;

(e) striking out the pleadings (whether in whole or in part); or

25 (f) further directions to proceed for case management under Order XVA.

(2) Where the Court makes any of the orders as set forth in sub-rule (1) (a) to (f), the Court shall record its reasons for making such order.

7. (1) Where it appears to the Court that it is possible that a claim or defence may succeed but it is improbable that it shall do so, the Court may make a conditional order as set forth in rule 6 (1) (b).

Conditional Order.

(2) Where the Court makes a conditional order, it may:—

(a) make it subject to all or any of the following conditions:—

(i) require a party to deposit a sum of money in the Court;

35 (ii) require a party to take a specified step in relation to the claim or defence, as the case may be;

(iii) require a party as the case may be to give such security or provide such surety for restitution of costs as the Court deems fit and proper;

40 (iv) impose such other conditions, including providing security for restitution of losses that any party is likely to suffer during the pendency of the suit, as the Court may deem fit in its discretion; and

(b) specify the consequences of the failure to comply with the conditional order, including passing a judgment against the party that have not complied with the conditional order.

Power to impose costs.	8. The Court may make an order for payment of costs in an application for summary judgment in accordance with the provisions of section 35 and section 35A of the Code."	
Omission of Order XV.	6. Order XV of the Code shall be omitted.	
Insertion of Order XV-A	7. After Order XV of the Code, the following Order shall be inserted, namely:— "ORDER XV-A CASE MANAGEMENT HEARING	5
First Case Management Hearing.	1. The Court shall hold the first 'Case Management Hearing', no later than four weeks from the date of filing of affidavit of admission or denial of documents by all parties to the suit.	
Orders to be passed in a Case Management Hearing.	2. In a Case Management Hearing, after hearing the parties, and once it finds that there are issues of fact and law which require to be tried, the Court may pass an order:— (a) framing the issues between the parties in accordance with Order XIV of the Code of Civil Procedure, 1908 after examining pleadings, documents and documents produced before it, and on examination conducted by the Court under rule 2 of Order X, if required; (b) listing witnesses to be examined by the parties; (c) fixing the date by which affidavit of evidence to be filed by parties; (d) fixing the dates on which evidence of the witnesses of the parties to be recorded; (e) fixing the date by which written arguments are to be filed before the Court by the parties; (f) fixing the date on which oral arguments are to be heard by the Court; and (g) setting time limits for parties or their advocates to address oral arguments.	10 5 of 1908. 15 20
Time limit for the completion of a trial.	3. In fixing dates or setting time limits for the purposes of rule 2 of this Order, the Court shall ensure that the arguments are closed no later than six months from the date of the first case management hearing.	25
Recording of oral evidence on a day-to-day basis.	4. The Court shall as far as possible ensure that the recording of evidence shall be carried on, on a day-to-day basis until the cross examination of all the witnesses is complete.	
Case Management Hearings during a trial.	5. The Court may, if necessary, also hold case management hearings anytime during the trial to issue appropriate orders so as to ensure adherence by the parties to the dates fixed under rule 2 and facilitate speedy disposal of the suit.	30
Powers of the Court in a Case Management Hearing.	6. (1) In any case management hearing held under this Order, the Court shall have the power to— (a) prior to the framing of issues, hear and decide any pending application filed by the parties under Order XIII A; (b) direct parties to file compilations of documents or pleadings relevant and necessary for framing issues; (c) extend or shorten the time for compliance with any practice direction or Court order if it finds sufficient reason to do so; (d) adjourn or bring forward a hearing if it finds sufficient reason to do so; (e) direct a party to attend the Court for the purposes of examination under rule 2 of Order X; (f) consolidate proceedings;	35 40

(g) strike off the name of any witness or evidence that it deems irrelevant to the issues framed;

(h) direct a separate trial of any issue;

(i) decide the order in which issues are to be tried;

5 (j) exclude an issue from consideration;

(k) dismiss or give judgment on a claim after a decision on a preliminary issue;

(l) direct that evidence be recorded by a commission where necessary in accordance with Order XXVI;

10 (m) reject any affidavit of evidence filed by the parties for containing irrelevant, inadmissible or argumentative material;

(n) strike off any parts of the affidavit of evidence filed by the parties containing irrelevant, inadmissible or argumentative material;

(o) delegate the recording of evidence to such authority appointed by the Court for this purpose;

15 (p) pass any order relating to the monitoring of recording the evidence by a commission or any other authority;

(q) order any party to file and exchange a costs budget;

(r) issue directions or pass any order for the purpose of managing the case and furthering the overriding objective of ensuring the efficient disposal of the suit.

20 (2) When the Court passes an order in exercise of its powers under this Order, it may—

(a) make it subject to conditions, including a condition to pay a sum of money into Court; and

(b) specify the consequence of failure to comply with the order or a condition.

25 (3) While fixing the date for a Case Management Hearing, the Court may direct that the parties also be present for such case management hearing, if it is of the view that there is a possibility of settlement between the parties.

7. (1) The Court shall not adjourn the case management hearing for the sole reason that the advocate appearing on behalf of a party is not present:

Adjournment
of Case
Management
Hearing.

30 Provided that an adjournment of the hearing is sought in advance by moving an application, the Court may adjourn the hearing to another date upon the payment of such costs as the Court deems fit, by the party moving such application.

(2) Notwithstanding anything contained in this rule, if the Court is satisfied that there is a justified reason for the absence of the advocate, it may adjourn the hearing to another date upon such terms and conditions it deems fit.

35 8. Where any party fails to comply with the order of the Court passed in a Case Management Hearing, the Court shall have the power to—

Consequences
of non-
compliance
with orders.

(a) condone such non-compliance by payment of costs to the Court;

40 (b) foreclose the non-compliant party's right to file affidavits, conduct cross-examination of witnesses, file written submissions, address oral arguments or make further arguments in the trial as the case may be, or

(c) dismiss the plaint or allow the suit where such non-compliance is wilful, repeated and the imposition of costs is not adequate to ensure compliance."

8. In Order XVIII of the Code in rule 2, for sub-rules (3A), (3B), (3C) and (3D), the following shall be substituted, namely:—

Amendment
of Order
XVIII.

"(3A) A party shall, within four weeks prior to commencing the oral arguments, submit concisely and under distinct headings written arguments in support of his case to the Court and such written arguments shall form part of the record.

(3B) The written arguments shall clearly indicate the provisions of the laws being cited in support of the arguments and the citations of judgments being relied upon by the party and include copies of such judgments being relied upon by the party.

(3C) A copy of such written arguments shall be furnished simultaneously to the opposite party.

(3D) The Court may, if it deems fit, after the conclusion of arguments, permit the parties to file revised written arguments within a period of no more than one week after the date of conclusion of arguments.

(3E) No adjournment shall be granted for the purpose of filing the written arguments unless the Court, for reasons to be recorded in writing, considers it necessary to grant such adjournment.

(3F) It shall be open for the Court to limit the time for oral submissions having regard to the nature and complexity of the matter."

Amendment of Order XVIII. **9.** In Order XVIII of the Code, in rule 4, after sub-rule(1), the following sub-rules shall be inserted, namely:—

(1A) The affidavits of evidence of all witnesses whose evidence is proposed to be led by a party shall be filed simultaneously by that party at the time directed in the first case management hearing.

(1B) A party shall not lead additional evidence by the affidavit of any witness (including of a witness who has already filed an affidavit) unless sufficient cause is made out in an application for that purpose and an order, giving reasons, permitting such additional affidavit is passed by the Court.

(1C) A party shall however have the right to withdraw any of the affidavits so filed at any time prior to commencement of cross-examination of that witness, without any adverse inference being drawn based on such withdrawal:

Provided that any other party shall be entitled to tender as evidence and rely upon any admission made in such withdrawn affidavit."

Amendment of Order XIX. **10.** In Order XIX of the Code, after rule 3, the following rules shall be inserted, namely:—

Court may control evidence. **4.** (1) The Court may, by directions, regulate the evidence as to issues on which it requires evidence and the manner in which such evidence may be placed before the Court.

(2) The Court may, in its discretion and for reasons to be recorded in writing, exclude evidence that would otherwise be produced by the parties.

Reacting or rejecting evidence. **5.** The Court may, in its direction, the reasons to be recorded in writing—

(1) redact or order the redaction of such portions of the affidavit of examination-in-chief as do not, in its view, constitute evidence;

(2) return or reject an affidavit of examination-in-chief as not constituting admissible evidence;

Format and guidelines of affidavit of evidence. **6.** (1) An affidavit must comply with the form and requirements set forth below:—

(a) such affidavit should be confined to, and should follow the chronological sequence of, the dates and events that are relevant for proving any fact or any other matter dealt with;

(b) where the Court is of the view that an affidavit is a mere reproduction of the pleadings, or contains the legal grounds of any party's case, the Court may, by order, strike out the affidavit or such parts of the affidavit, as it deems fit and proper;

5 (c) each paragraph of an affidavit should, as far as possible, be confined to a distinct portion of the subject;

(d) an affidavit shall state:—

(i) which of the statements in it are made from the deponent's own knowledge and which are matters of information or belief; and

(ii) the source for any matters of information or belief;

10 (e) an affidavit should:—

(i) have the pages numbered consecutively as a separate document (or as one of several documents contained in a file);

(ii) be divided into numbered paragraphs;

(iii) have all numbers, including dates, expressed in figures; and

15 (iv) if any of the documents referred to in the body of the affidavit are annexed to the affidavit or any other pleadings, give the annexures and page numbers of such documents that are relied upon."

11. In Order XX of the Code, for rule 1, the following rule shall be substituted, namely:—

Amendment
of Order XX.

20 "(I) The Commercial Court, Commercial Division, or Commercial Appellate Division, as the case may be, shall, within ninety days of the conclusion of arguments, pronounce judgment and copies thereof shall be issued to all the parties to the dispute through electronic mail or otherwise."

APPENDIX

STATEMENT OF TRUTH

25 (Under First Schedule, Order VI- Rule 15A and Order X- Rule 1)

STATEMENT OF TRUTH BY [party position and name of party in full] I, the deponent above-named, do hereby solemnly affirm and declare as under:

1. I am [name of party and relevant details] in the above suit and competent to swear this affidavit.

30 2. I am sufficiently conversant with the facts of the case and have also examined all relevant documents and records in relation thereto.

35 3. I say that the statements made in [mention specific paragraph numbers] paragraphs are true to my knowledge and statements made in [mention specific paragraph numbers] paragraphs are based on information received which I believe to be correct and statements made in [mention specific paragraph numbers] are based on legal advice.

4. I say that there is no false statement or concealment of any material fact, document or record and I have included information that is according to me, relevant for the present suit.

40 5. I say that all documents in my power, possession, control or custody, pertaining to the facts and circumstances of the proceedings initiated by me have been disclosed and copies thereof annexed with the plaint, and that I do not have any other documents in my power, possession, control or custody.

6. I say that the above-mentioned pleading comprises of a total of [number of pages] pages, each of which has been signed by me.

7. I state that the Annexures hereto are true copies of the documents referred to and relied upon by me.

8. I say that I am aware that for any false statement or concealment, I shall be liable for action taken against me under the law.

Place

Date

DEPONENT VERIFICATION

The statements made above are true to my knowledge.

Verified at [place] on this [date]

DEPONENT

STATEMENT OF OBJECTS AND REASONS

The proposal to provide for speedy disposal of high value commercial disputes has been under consideration of the Government for quite some time. The high value commercial disputes involve complex facts and question of law. Therefore, there is a need to provide for an independent mechanism for their early resolution. Early resolution of commercial disputes shall create a positive image to the investor world about the independent and responsive Indian legal system.

2. The Law Commission of India in its 188th Report had recommended the constitution of the Commercial Division in each High Court. Accordingly, the Commercial Division of High Courts Bill, 2009 was introduced and passed by the Lok Sabha. However during the discussion of the aforesaid Bill in the Rajya Sabha, some Members raised certain issues and in view thereof, the matter was again referred to the Law Commission of India for its examination. The Law Commission of India, in its 253rd Report, has recommended for the establishment of the Commercial Courts, the Commercial Divisions and the Commercial Appellate Divisions in the High Courts for disposal of commercial disputes of specified value.

3. The Commercial Courts shall be constituted at District level except for the territory over which any High Court is having ordinary original civil jurisdiction. The Commercial Divisions shall be set up in those High Courts which are already exercising ordinary original civil jurisdiction and they shall have territorial jurisdiction over such areas on which it has original jurisdiction. The minimum pecuniary jurisdiction of such Commercial Courts and Commercial Division is proposed as one crore rupees.

4. The Commercial Appellate Division shall be set up in all the High Courts to hear the appeals against the Orders of the Commercial Courts and the Orders of the Commercial Division of the High Court.

5. It is proposed to have a streamlined procedure which is to be adopted for the conduct of cases in the Commercial Courts and in the Commercial Divisions by amending the Code of Civil Procedure, 1908 so as to improve the efficiency and reduce delays in disposal of commercial cases. The proposed case management system and provisions for summary judgment will enable disposal of commercial disputes in a time bound manner. The proposed amendments to the Code of Civil Procedure, 1908 as applicable to the Commercial Courts and Commercial Divisions shall prevail over the existing High Court Rules and other provisions of the Code of Civil Procedure, 1908.

6. The proposed Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015 shall ensure that the commercial cases are disposed of expeditiously, fairly and at reasonable cost to the litigant. The proposal to establish the Commercial Courts and the Commercial Division of the High Court shall,—

- (i) accelerate economic growth;
- (ii) improve the international image of the Indian justice delivery system; and
- (iii) improve the faith of the investor world in the legal culture of the nation.

7. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 24th April, 2015.

D. V. SADANANDA GOWDA.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 23 of the Bill empowers the Central Government to make rules for the purpose of carrying out the provisions of the proposed legislation. Sub-clause (2) of the said clause enumerates the matters in respect of which such rules may be made. These matters, *inter alia*, include (a) the manner of appointment of Judge of a Commercial Court under sub-section (1) of section 5; (b) the terms and conditions of service of the Judges of the Commercial Courts under sub-section (4) of section 5; and (c) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made by rules.

2. The rules made by the Central Government are required to be laid before each House of the Parliament.

3. The matters in respect of which rules may be made by the Central Government are matters of administrative details or of procedure and it is not possible to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

ANNEXURE

EXTRACTS FROM THE CODE OF CIVIL PROCEDURE, 1908

(5 OF 1908)

* * * * *

Costs

35. (1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incident to all suits shall be in the discretion of the Court, and the Court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid. The fact that the Court has no jurisdiction to try the suit shall be no bar to the exercise of such powers. Cost.

(2) Where the Court directs that any costs shall not follow the event, the Court shall state its reasons in writing.

35A. (1) * * * * *

(2) No Court shall make any such order for the payment of an amount exceeding three thousand rupees or exceeding the limits of its pecuniary jurisdiction, whichever amount is less: Compensatory costs in respect of false or vexatious claims or defences.

9 of 1887.

Provided that where the pecuniary limits of the jurisdiction of any Court exercising the jurisdiction of a Court of small causes under the Provincial Small Cause Courts Act, 1887, or under a corresponding law in force in any part of India to which the said Act does not extend and not being a Court constituted under such Act or law are less than two hundred and fifty rupees, the High Court may empower such Court to award as costs under this section any amount not exceeding two hundred and fifty rupees and not exceeding those limit by more than one hundred rupees:

Provided, further, that the High Court may limit the amount which any Court or class of Courts is empowered to award as costs under this section.

* * * * *

ORDER V

ISSUE AND SERVICE OF SUMMONS

Issue of Summons

1. (1) When a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and to file the written statement of his defence, if any, within thirty days from the date of service of summons on the defendant: Summons.

Provided that no such summons shall be issued when a defendant has appeared at the presentation of plaint and admitted the plaintiff's claim:

Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.

* * * * *

ORDER VIII

WRITTEN STATEMENT, SET-OFF AND COUNTER-CLAIM

Written statement.

1. The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.

* * * * *

ORDER XI

DISCOVERY AND INSPECTIONS

Discovery by interrogatories.

1. In any suit the plaintiff or defendant by leave of the Court may deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties, and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such persons is required to answer:

Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose:

Provided also that interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.

Particular interrogatories to be submitted.

2. On an application for leave to deliver interrogatories, the particular interrogatories proposed to be delivered shall be submitted to the Court and that Court shall decide within seven days from the date of filing of the said application. In deciding upon such application, the Court shall take to account any offer, which may be made by the party sought to interrogated to deliver particulars, or to make admissions, or to produce documents relating to the matters in question, or any of them, and leave shall be given as to such only of the interrogatories submitted as the Court shall consider necessary either for disposing fairly of the suit or for saving costs.

Costs of interrogatories.

3. In adjusting the costs of the suit inquiry shall at the instance of any party be made into the propriety of exhibiting such interrogatories, and if it is the option of the taxing officer or of the Court, either with or without an application for inquiry, that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be paid in any event by the party in fault.

Form of interrogatories.

4. Interrogatories shall be in Form No. 2 in Appendix C, with such variations as circumstances may require.

Corporations.

5. Where any party to a suit is a corporation or a body of persons, whether incorporated or not, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply for an order allowing him to deliver interrogatories to any member of officer of such corporation or body, and an order may be made accordingly.

Objections to interrogatories by answer.

6. Any objection to answering any interrogatory on the ground that it is scandalous or irrelevant or not exhibited *bona fide* for the purpose of the suit, or that the matters inquired into are not sufficiently material at that stage, or on the ground of privilege or any other ground, may be taken in the affidavit in answer.

7. Any interrogatories may be set aside on the ground that they have been exhibited unreasonably or vexatiously, or struck out on the ground that they are prolix, oppressive, unnecessary or scandalous; and any application for this purpose may be made within seven days after service of the interrogatories. Setting aside and striking out interrogatories.
8. Interrogatories shall be answered by affidavit to be filed within ten days, or within such other time as the Court may allow. Affidavit in answer, filling
9. An affidavit in answer to interrogatories shall be in Form No. 3 in Appendix C, with such variations as circumstances may require. Form of affidavit in answer.
10. No exceptions shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the Court. No exception to be taken.
11. Where any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the Court for an order requiring him to answer, or to answer further, as the case may be. And an order may be made requiring him to answer or answer further, either by affidavit or by *viva doce* examination, as the Court may direct. Order to answer or answer further.
12. Any party may, without filing any affidavit, apply to the Court for an order directing any other party to any suit to made discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the Court may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the suit, or make such order, either generally or limited to certain classes of documents, as may, in its discretion, be thought fit : Application for discovery of documents.
- Provided that discovery shall not be ordered when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.
13. The affidavit to be made may a party against whom such order as is mentioned in the last preceding rule has been made, shall specify which (if any) of the documents therein mentioned be objects to produce, and it shall be in Form No. 5 in Appendix C, with such variations as circumstances may require. Affidavit of documents.
14. It shall be lawful for the Court, at any time during the pendency of any suit, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just. Production of documents.
15. Every party to a suit shall be entitled at or before the settlement of issues to give notice to any other party, in whose pleadings or affidavits reference is made to any document, or who has entered any document in any list annexed to his pleadings, to produce such document for the inspection of the party giving such notice, or of his pleader, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such suit unless he shall satisfy the Court that such document relates only to his own title, he being a defendant to the suit, or that he had some other cause or excuse which the Court shall deem sufficient for not complying with such notice, in which case the Court may allow the same to be put in evidence on such terms as to costs and otherwise as the Court shall think fit. Inspection of documents referred to in pleadings or affidavits.
16. Notice to any party to produce any documents referred to in his pleading or affidavits shall be in Form No. 7 in Appendix C, with such variations as circumstances may require. Notice to produce.
17. The party to whom such notice is given shall, within ten days from the receipt of such notice, deliver to the party giving the same a notice stating a time within three days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his pleader, or in the case of bankers' books or other books of account or books in constant use for the purposes of any trade or business, at their usual place of custody, and stating which (in any) of the documents he objects to produce, and on what ground. Such notice shall be in Form No. 8 in Appendix C, with such variations as circumstances may require. Time for inspection when notice given.

Order for inspection.

18. (1) Where the party served with notice under rule 15 omits to give such notice of a time for inspection or objects to give inspection, or offers inspection elsewhere than at the office of his pleader, the Court may, on the application of the party desiring it, make an order for inspection in such place and in such manner as it may think fit: Provided that the order shall not be made when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

(2) Any application to inspect documents, except such as are referred to in the pleadings, particulars or affidavits of the party against whom the application is made or disclosed in his affidavit of documents, shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party. The Court shall not make such order for inspection of such documents when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

Verified copies.

19. (1) Where inspection of any business books is applied for, the Court may, if it thinks fit, instead of ordering inspection of the original books, order a copy of any entries therein to be furnished and verified by the affidavit of some person who has examined the copy with the original entries, and such affidavit shall state whether or not there are in the original book any and what erasures, inter- lineations or alterations:

Provided that, notwithstanding that such copy has been supplied, the Court may order inspection of the book from which the copy was made.

(2) Where on an application for an order for inspection privilege is claimed for any document, it shall be lawful for the Court to inspect the document for the purpose of deciding as to the validity of the claim of privilege, unless the document relates to matters of State.

(3) The Court may, on the application of any party to a suit at any time, and whether an affidavit of documents shall or shall not have already been ordered or made, make an order requiring any other party to state by affidavit whether any one or more specific documents, to be specified in the application, is or are, or has or have at any time been, in his possession or power; and, if not then in his possession, when he parted with the same and what has become thereof such application shall be made on an affidavit stating that in the belief of the deponent the party against whom the application is made has, or has at some time had, in his possession or power the document or documents specified in the application, and that they relate to the matters in question in the suit, or to some of them.

Premature discovery.

20. Where the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the Court may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the suit, or that for any other reason it is desirable that any issue or question in dispute in the suit should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection.

Non-compliance with order for discovery.

21. (1) Where any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the Court for an order to that effect, and an order may be made on such application accordingly, after notice to the parties and after giving them a reasonable opportunity of being heard.

(2) Where an order is made under sub-rule (1) dismissing any suit, the plaintiff shall be precluded from bringing a fresh suit on the same cause of action.

22. Any party may, at the trial of a suit, use in evidence anyone or more of the answers or any part of an answer of the opposite party to interrogatories without putting in the others or the whole of such answer:

Using answers to interrogatories at trial.

Provided always that in such case the Court may look at the whole of the answers, and if it shall be of opinion that any others of them are so connected with those put in that the last-mentioned answers ought not to be used without them, it may direct them to be put in.

23. This order shall apply to minor plaintiffs and defendants, and to the next friends and guardians for the suit of persons under disability.

Order to apply to minors.

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ORDER XV

DISPOSAL OF THE SUIT AT THE FIRST HEARING

1. Where at the first hearing of a suit it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgement.

Parties not at issue.

2. (1) Where there are more defendants than one, and any one of the defendants is not at issue with the plaintiff on any question of law or of fact, the Court may at once pronounce judgement for or against such defendant and the suit shall proceed only against the other defendants.

One of several defendants not at issue.

(2) Whenever a judgement is pronounced under this rule, a decree shall be drawn up in accordance with such judgement and the decree shall bear the date on which the judgement was pronounced.

3. (1) Where the parties are at issue on some question of law or of fact, and issue have been framed by the Court as hereinbefore provided, if the Court is satisfied that no further argument or evidence than the parties can at once adduce is required upon such of the issues as may be sufficient for the decision of the suit, and that no injustice will result from proceeding with the suit forthwith, the Court may proceed to determine such issues, and if, if the finding thereon is sufficient for the decision, may pronounce judgement accordingly, whether the summons has been issued for the settlement of issues only or for the final disposal of the suit:

Parties at issue.

Provided that, where the summons has been issued for the settlement of issues only, the parties or their pleaders are present and none of them objects.

(2) Where the finding is not sufficient for the decision, the Court shall postpone the further hearing of the suit, and shall fix a day for the production of such further evidence, or for such further argument as the case requires.

4. Where the summons has been issued for the final disposal of the suit and either party fails without sufficient cause to produce the evidence on which he relies, the Court may at once pronounce judgement, or may, if it thinks fit, after framing and recording issues, adjourn the suit for the production of such evidence as may be necessary for its decision upon such issues.

Failure to produce evidence.

* * * * *

ORDER XVIII

HEARING OF THE SUIT AND EXAMINATION OF WITNESSES

* * * * *

2. (1) On the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.

Statement and production of evidence.

* * * * *

(3A) Any party may address oral arguments in a case, and shall, before he concludes the oral arguments, if any, submit if the Court so permits concisely and under distinct headings written arguments in support of his case to the Court and such written arguments shall form part of the record.

(3B) A copy of such written arguments shall be simultaneously furnished to the opposite party.

(3C) No adjournment shall be granted for the purpose of filing the written arguments unless the Court, for reasons to be recorded in writing, considers it necessary to grant such adjournment.

(3D) The Court shall fix such time-limits for the oral arguments by either of the parties in a case, as it thinks fit.

* * * * *

ORDER XX

JUDGMENT AND DECREE

Judgement when pronounced.

1. (I) The Court, after the case has been heard, shall pronounce judgment in an open Court, either at once, or as soon thereafter as may be practicable and when the judgment is to be pronounced on some future day, the Court shall fix a day for that purpose, of which due notice shall be given to the parties or their pleaders:

Provided that where the judgment is not pronounced at once, every endeavour shall be made by the Court to pronounce the judgment within thirty days from the date on which the hearing of the case was concluded but, where it is not practicable so to do on the ground of the exceptional and extraordinary circumstances of the case, the Court shall fix a future day for the pronouncement of the judgment, and such day shall not ordinarily be a day beyond sixty days from the date on which the hearing of the case was concluded, and due notice of the day so fixed shall be given to the parties or their pleaders.

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RAJYA SABHA

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BILL

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

(Shri D.V. Sadananda Gowda, Minister of Law and Justice)