

AMENDMENT IN BYE LAWS TO EXTEND LIMITATION PERIOD TO INVOKE ARBITRATION – RETROSPECTIVE OR PROSPECTIVE

Abstract: *Whether the amendment in the byelaws of an organization extending the period of limitation has retrospective or prospective effect? What would be their impact as to the time barred claim which subsequently becomes maintainable by virtue of the amendment? Would the said time barred claim maintainable or not would simply depend upon the fact whether the applicant has a substantive right or not. The article discusses this legal issue in the light of judicial pronouncements.*

Legal Issue

In the matter of disputes between the member and clients arising from transactions executed between the parties, the law of limitation provides a time limit of three years to file the claims as per procedure. However, the exchanges have framed the bye laws as per power conferred on them under the Security Contract Regulation Act, 1956 and Forward Contract Regulation Act, 1952. The time limit for reference to the arbitration was initially fixed at 6 months and subsequently extended to 1 year and finally to three years. It is pertinent to mention that these limits has been provided for reference to arbitration and has been specifically mentioned to be invalid for the purpose of civil court. Thus, an applicant has a right to approach the civil court, if he was not able to file the claim within six months or one year and can file his claim during the remaining span making the total limitation period of three years. The problem however arises in the cases where the applicant has crossed the limitation period of one year but subsequently the limitation was extended to three years and his claim fell within the limitation period otherwise. For ex; the dispute of a person arose on 01/01/2010 and the limitation period from reference to arbitration was one year. The applicant filed the claim in 2012 when the limitation period was extended to three years on 01/01/12. Now, the claim is time barred in 2011 as far as the arbitration is concerned but valid for civil courts and subsequently, it becomes maintainable in arbitration also in view of the amendment.

The issue which need to be decided whether various circulars issued by the exchanges extending the time for reference to arbitration from six months to one year and subsequently to three years has a retrospective or prospective effect.

Legal Proposition

There are various judicial pronouncements on the issue as to whether an amending Act has a retrospective operation, applicable to pending cases also or can merely be applied prospectively to fresh cases.

The law on whether an amending Act has a retrospective operation, applicable to pending cases also or can merely be applied prospectively to fresh cases can be said to be beyond controversy. In brief, amendment in procedure has a retrospective effect while the amendment in the substantive law applies prospectively as held by Hon'ble Apex Court and various High Courts. Controversy very often arises in whether the amendments, made are procedural or substantive.

Whether the amendment extending the period of limitation is procedural or substantive? In this regard, it would be pertinent to refer to the judicial

pronouncement of **Bharat Barrel and Drum Mfg. Co. P. Ltd. v. E.E.I. Corporation AIR 1972 SC 1935**:

"Where a statute prescribing the limitation extinguishes the right it affects substantive rights while that which purely pertains to the commencement of action without touching the right is said to be procedural."

The Hon'ble Allahabad High Court in the case cited as **Niranjan Prasad Agrawal Vs. S.K. Azad, 1973AWR(H.C.)43644** after referring to various judicial pronouncements of Hon'ble Apex Court has summarized the principles governing repealing or amending Acts as follows:

"1. An amendment affecting the vested right of a person does not operate retrospectively unless a different intention appears and such intention has been expressed in clear words or can be deduced by necessary implication.

2. An amendment affecting the vested right of a person can operate retrospectively where the object of the enactment is to protect the public against some evil or abuse.

3. An amendment of a procedural law has ordinarily retrospective operation.

4. A procedural amendment does not affect the procedure correctly adopted and concluded under the old law: where the procedure as prescribed under the old law had been correctly adopted the matter cannot be reopened for the purpose of applying the new procedure."

In the case of **Hitendra Vishnu Thakur Vs. State of Maharashtra 1995CriLJ517**, the Apex Court laid down the ambit and scope of an amending Act and its retrospective operation as follows:

"(i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly - defined limits.

(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.

(iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.

(iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.

(v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication."

Conclusion

Thus, from the aforesaid judicial pronouncements, it is to be seen that at the time of filing the claim, whether the applicant has a substantive right or not. If the applicant not having any substantive right, the amendment cannot revive a right which does not exist in the eyes of law and shall have prospective effect. If the applicant has a substantive right and the amendment in the bye laws has only the procedural implication as to instituting the claim either in arbitration or in civil court and thus, such amendments are of procedural nature as it did not curtail or extend any substantive right. As emerged from the aforementioned cases, the procedural amendment in the bye law extending the period of limitation has the retrospective effect.