

AMENDMENTS MADE TO CPC BY THE COMMERCIAL COURTS ACT, 2015

Intern

Introduction

The objective of Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (the Principal Act) was speedy resolution of commercial disputes. The "Commercial disputes" have been defined with an inclusive definition and it covers almost all disputes arising out of the commercial activities¹. **The Act provides for a Schedule which amends certain provisions of CPC.** These provisions are applicable to Commercial Disputes of



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¹ **Section 2 (c)** "commercial dispute" means a dispute arising out of—

- (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;
- (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;
- (viii) franchising agreements;
- (ix) distribution and licensing agreements;
- (x) management and consultancy agreements;
- (xi) joint venture agreements;
- (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;
- (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;
- (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; and
- (xxii) such other commercial disputes as may be notified by the Central Government.

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

Specified Value² and the Commercial Court or Commercial Court shall follow the amended provision. The Act has clarified that the provisions of the CPC as amended by the Act would have an overriding effect over any rules of the High Court, or the amendments to the CPC made by a State Government.

Pre-Institution Mediation and Settlement- The Act introduces Section 12A providing for mandatory pre-institution mediations in all cases, other than those cases which require any urgent interim relief. Such pre-institution mediation has to be conducted through Authority authorized by the Central Government. The process of pre-institution mediation has to be completed within a period of three months, extendable by two months with consent of the parties, from the date of application made by the Plaintiff. Time spent in pre-institution mediation shall not be computed for the purpose of limitation under the Limitation Act, 1963. If the parties to the commercial dispute arrive at a settlement, the same shall be reduced into writing and shall be signed by the parties to the dispute and the mediator. The Settlement arrived at under this provision shall have the same status and the effect as if it is an arbitral award on agreed terms under sub-section (4) of Section 30 of the Arbitration and Conciliation Act, 1996.

Overriding Effect³

Section 16 of the Act clearly states that this Act will have overriding effect on the provisions of Code of Civil Procedure, 1908 (hereinafter 'Code'), and its amendments. It clearly mentions that in case of conflict between any rules of the Code, rules of jurisdictional High Courts or any state amendments made to the Code, the provisions of the Act, as it amends the Code, will prevail.

In a landmark case of **Axis Bank Ltd. v. Mira Gehnani**⁴, the Bombay High Court held that amendments introduced to CPC by the Commercial Courts Act are only applicable to Commercial Disputes of a Specified Value and not Commercial Disputes not of a Specified Value such as the present suit⁵.

Changes made to provisions of CPC

² **Section 2 (i)** "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 1 [which shall not be less than three lakh rupees] or such higher value, as may be notified by the Central Government.

³ **Section 16 - Amendments to the Code of Civil Procedure, 1908 in its application to commercial disputes.**—
(1) The provisions of the Code of Civil Procedure, 1908 (5 of 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.

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

(3) Where any provision of any Rule of the jurisdictional High Court or any amendment to the Code of Civil Procedure, 1908 (5 of 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.

⁴ 2019 SCC OnLine Bom 358

⁵ <https://www.sconline.com/blog/post/2019/06/06/bom-hc-s-16-of-commercial-courts-act-to-be-interpreted-literally-amendments-brought-in-cpc-applicable-only-to-commercial-disputes-of-a-specified-value/>

- a. Costs** – The costs ordered by the court in relation to a suit are governed by **Section 35** of CPC. The said section provided discretionary powers to the court while determining the costs. The Act has substituted the said section to provide a general rule for payment of costs by the unsuccessful party. The Court may deviate from the general rule after recording the reasons in writing. The order for costs would include fees and expenses of the witnesses, legal fees, and broadly, any fees involved in furtherance of the proceedings. The court has to also consider the conduct of parties, whether the party has succeeded partially if not wholly, whether frivolous claims or counterclaims were made, whether an offer for settlement was unreasonably rejected.
- b. Procedure for Summary Judgment** – The Act introduces a system of “Summary Judgment” through a new **Order XIII-A** in the CPC. Summary judgment is given by the court without recording oral evidence in the following scenarios⁶:
- (a) the plaintiff has no real prospect of succeeding on the claim; or
 - (b) the defendant has no real prospect of successfully defending the claim; or
 - (c) in the absence of any other compelling reason for recording of oral evidence.

An applicant may apply for summary judgment at any time after summons has been served on the defendant. However, no such application will be entertained after the court has framed the issues in respect of the suit. An application for summary judgment shall not be made in a suit if that is originally filed as a summary suit under Order XXXVII. The applicant may rely on documentary evidence in support of its application. The date for hearing a summary judgment of a commercial dispute must be fixed, after giving a notice period of thirty days to the respondent. The respondent has to file his reply within thirty days of the receipt of notice of application of summary judgment or notice of hearing, whichever is earlier.

- c. Pleadings in a commercial dispute – Order VI** of CPC deals with pleadings. The form of pleadings in commercial dispute will be as per High Court Rules or Practice Directions provided for such disputes. A new Rule 15A has been inserted, which pertains to verification of pleadings in a commercial dispute, in a prescribed manner (Statement of Truth). In the absence of verification, the pleadings cannot be relied as evidence. Every pleading has to be verified by an affidavit signed by the party, or one of the parties to the proceedings or any person who is acquainted with the facts of the case and authorized by such parties. If the pleading is amended, the same has to be verified.
- d. Delay in filing written statement** – The maximum period within which the written statement could be filed is 90 days under CPC. The Act has increased the time period to 120 days. Accordingly the Act has amended **Order V** of CPC dealing with issue of summons and **Order VIII** of CPC pertaining to filing of written statement by the defendant. As per the provisions of CPC, if a party fails to present written statement, the court shall pronounce judgment or make an order in relation to the suit. The Act states that, the order made by the court cannot extend the time period of 120 days⁷.
- e. Procedure for disclosure, discovery and inspection of documents before the Commercial Courts** – Order XI of the CPC lays down the procedure for discovery and inspection of the facts of the suit through interrogatories. The Act has substituted this Order to include disclosure, along with discovery and inspection of documents. Under the new provisions, parties are required to file a list of all documents and the

⁶ Su-kam Power Systems Ltd. Vs. Kunwer Sachdev & Ors., reported as 264 (2019) DLT 326.

⁷ SCG Contract (India) Pvt Ltd. Vs. K S Chamankar Infrastructure Pvt Ltd.& Ors. (2019) 12SCC 210

photocopies of all these documents at the stage of filing of plaint/written statement, specifying inter alia, in whose possession the documents are currently (whether the plaintiff or the respondent or any other person). They are mandated to include a declaration on oath stating that they are not in possession of any documents other than the photocopies of the documents they had already placed on record. The parties are not allowed to rely on any documents other than the ones mentioned in the list and whose photocopies had been filed, without leave of the Court. However, the Act has granted discretion to the Court to award exemplary costs against a party who willfully, unreasonably, wrongfully, or even negligently failed to disclose all documents pertaining to the suit in their possession.

- f. Electronic records** – The evidentiary value of electronic records has already been recognized under the provisions of Indian Evidence Act, 1872 and Information Technology Act, 2000. The Act has incorporated the relevant provisions providing procedural rules in respect of the same under the new **Order XI** of the CPC.
- g. Written arguments – Order XVIII** of the CPC deals with hearing of suit and examination of witnesses and consists of provisions pertaining to written arguments. As per the new provisions in this Order inserted by the Act, parties have been mandated to submit concise written arguments under distinct headings within four weeks of commencement of oral arguments. Revised written arguments may be filed within one week of the conclusion of arguments. Earlier, no such time restriction had been stipulated.
- h. Amendments in procedure related to Affidavits** – The Act has inserted **new Rules in Order XIX** of the CPC, in addition to the existing procedure related to affidavits. The courts have been empowered to control the evidence, by being permitted to decide the issues which require evidence, and the manner in which such evidence is to be recorded. The Commercial Courts even have discretion to exclude evidence that would otherwise have been produced by the parties. They have been empowered to redact or reject any affidavits, which in their view does not constitute admissible evidence.
- i. Time period for pronouncing judgment – Rule 1 of Order XX of the CPC** stipulates that judgment must be pronounced within a maximum time period of 60 days from the date of conclusion of hearings. The Act has provided a maximum time period of 90 days commencing from the date of conclusion of arguments, for pronouncing the judgment.
- j. Case Management hearing** – An international practice of case management hearing has been introduced in India for the first time through a new Order inserted into the CPC- **Order XV-A**. This allows the Court to make a time line, and fix dates for the proceedings of the matter.

The first Case Management Hearing has to be held by the court within four weeks from the date of filing of affidavit of admission or denial of documents by all parties to the suit. Arguments have to be closed within six months of the first Case Management Hearing. It provides that no adjournment for Case Management Hearing would be entertained for the sole reason of non-appearance of counsel. If such application had been made in advance, it would be accepted, upon payment of costs.

Non-compliance with Case Management Hearings shall be condoned by the Court only upon payment of costs, but it might also result in forfeiture of the party's right to conduct the suit. In extreme cases of willful non-appearance, the Court has the discretion to dismiss the plaint.

- k. Disposal of a suit at first hearing – Order XV** of CPC deals with disposal of suit at first hearing. The said Order has been omitted by the Act.

I. Amendments at Glance:

S.No.	Section/Order	Amendment
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1.	Section 35 (Costs)	<p>Substitution of new section for section 35.—For section 35 of the Code, the following section shall be substituted, namely:—</p> <p>35. Costs.—</p> <p>(1) In relation to any commercial dispute, the Court, notwithstanding anything contained in any other law for the time being in force or Rule, has the discretion to determine:</p> <p>(a) whether costs are payable by one party to another;</p> <p>(b) the quantum of those costs; and</p> <p>(c) when they are to be paid.</p> <p>Explanation—</p> <p>For the purpose of clause (a), the expression “costs” shall mean reasonable costs relating to—</p> <p>(i) the fees and expenses of the witnesses incurred;</p> <p>(ii) legal fees and expenses incurred;</p> <p>(iii) any other expenses incurred in connection with the proceedings.</p> <p>(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.</p> <p>Provided that the Court may make an order deviating from the general rule for reasons to be recorded in writing.</p>
2.	Section 35A (Compensatory costs in respect of false or vexatious claims or defences)	Sub-section 2 of Section 35A should not be applicable to commercial disputes of a specified value.
3.	Order V (Issue and Service of Summons)	<p>For the second proviso, the following proviso shall be substituted, namely:—</p> <p>“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 and 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.”</p>
4.	Order VI (Pleading Generally)	Rule 3A. Forms of pleading in Commercial Courts —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.”

			<p>15A. Verification of pleadings in a commercial dispute—</p> <p>(1) 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.</p> <p>(2) An affidavit under sub-rule (1) 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.</p> <p>(3) Where a pleading is amended, the amendments must be verified in the form and manner referred to in sub-rule (1) unless the Court orders otherwise.</p> <p>(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.</p> <p>(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."</p>
5.	Order (Plaint)	VII	<p>Rule 2A. Where interest is sought in the suit—</p> <p>(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).</p> <p>(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 (5 of 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.</p> <p>(3) Pleadings shall also state—</p> <p>(a) the rate at which interest is claimed;</p> <p>(b) the date from which it is claimed;</p> <p>(c) the date to which it is calculated;</p> <p>(d) the total amount of interest claimed to the date of calculation; and (e) the daily rate at which interest accrues after that date."</p>
6.	Order (Written Statement, Set-off and Counter-claim)	VIII	<p>Proviso for Rule 1 shall be substituted, namely:-</p> <p>"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 and 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</p>

		<p>the written statement to be taken on record.”</p> <p>3A. Denial by the defendant in suits before the Commercial Division of the High Court or the Commercial Court—</p> <p>(1) Denial shall be in the manner provided in sub-rules (2), (3), (4) and (5) of this Rule.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(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.”</p> <p>First Proviso to Rule 5 shall be inserted, namely:</p> <p>“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.”</p> <p>Proviso to Rule 10 shall be inserted, namely:</p> <p>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.</p>
7.	Order XI, XIII-A, XV-A	<p>Order XI is related to Disclosure, Discovery and Inspection of Documents In Suits Before The Commercial Division of a High Court or a Commercial Court</p> <p>Order XIII-A is related to summary judgment.</p> <p>Order XV-A is related to case management hearing.</p>
8.	Order XVIII (Hearing of the suit and examination of witnesses)	<p>In Rule 2 for sub-rules (3A), (3B), (3C), (3D), (3E) and (3F), the following shall be substituted, namely:—</p> <p>“(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.</p> <p>(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.</p> <p>(3C) A copy of such written arguments shall be furnished</p>

		<p>simultaneously to the opposite party.</p> <p>(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 not more than one week after the date of conclusion of arguments.</p> <p>(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.</p> <p>(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."</p> <p>In Rule 4, after sub-rule (1), the following sub-rules shall be inserted, namely:—</p> <p>“(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.</p> <p>(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.</p> <p>(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.”</p>
<p>9.</p>	<p>Order XIX (Affidavits)</p>	<p>After Rule 3, the following Rules shall be inserted, namely:—</p> <p>4. Court may control evidence.—</p> <p>(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.</p> <p>(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.</p> <p>5. Redacting or rejecting evidence.—A Court may, in its discretion, for reasons to be recorded in writing— (i) redact or order the redaction of such portions of the affidavit of examination-in-chief as do not, in its view, constitute evidence; or (ii) return or reject an affidavit of examination-in-chief as not constituting admissible evidence.</p> <p>6. Format and guidelines of affidavit of evidence.—An affidavit must comply with the form and requirements set forth below:—</p> <p>(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;</p> <p>(b) where the Court is of the view that an affidavit is a mere</p>

		<p>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;</p> <p>(c) each paragraph of an affidavit should, as far as possible, be confined to a distinct portion of the subject;</p> <p>(d) an affidavit shall state—</p> <p>(i) which of the statements in it are made from the deponent's own knowledge and which are matters of information or belief; and</p> <p>(ii) the source for any matters of information or belief;</p> <p>(e) an affidavit should—</p> <p>(i) have the pages numbered consecutively as a separate document (or as one of several documents contained in a file);</p> <p>(ii) be divided into numbered paragraphs;</p> <p>(iii) have all numbers, including dates, expressed in figures; and</p> <p>(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."</p>
<p>10.</p>	<p>Order XX (Judgment and Decree)</p>	<p>For Rule 1, the following Rule shall be substituted, namely:—</p> <p>(1) The Commercial Court, Commercial Appellate 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.</p>

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