

NOTIFICATION No.48/2018

In exercise of the powers conferred under Section 18 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (Act 4 of 2016), the Hon'ble The Chief Justice is pleased to issue the following Practice Note :

Practice Note for Commercial Division and Commercial Appellate

Division in Madras High Court

In the light of Constitution/Nomination of Commercial Division and Commercial Appellate Division under Sections 4 and 5 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (4 of 2016) (hereinafter referred to as 'Act 4 of 2016' in this Practice Note for brevity and convenience) by the Hon'ble the Chief Justice of Madras High Court, the following guidelines are issued for the guidance of all concerned.

I. Commercial Division

Jurisdiction of Commercial Division

1) Suits and applications therein relating to a 'Commercial Dispute' as defined in Section 2(1)(c) of Act 4, 2016 and which are of 'Specified value' within the meaning of Section 2(1)(i) read with Section 12 of Act 4 of 2016. To be noted, there are 22 sub-clauses /categories of commercial disputes under Section 2(1)(c) [Section 7 of Act 4 of 2016].

2) Suits and applications therein relating to a 'Commercial Dispute' within the meaning of Section 2(1)(c)(xvii) of Act 4 of 2016 filed or pending on the original side of this Court which attract any one or more of the following provisions:

- i) Section 134 (1) of Trademarks Act, 1999;
- ii) Section 62(1) of Copyright Act, 1957;
- iii) Second proviso to Section 22(2) of Designs Act, 2000;
- iv) Section 104 of Patents Act, 1970; and
- v) Section 66(1) of Geographical Indications of Goods (Registration and Protection) Act, 1999.

3) Transferred suits and applications therein, which have been transferred to Madras High Court under any one or both of the following provisions:

- i) Section 22(4) of Designs Act, 2000;
- ii) Proviso to Section 104 of Patents Act, 1970.

Arbitration Matters

1) All applications and appeals filed in High Court arising out of International Commercial Arbitrations where the subject matter of arbitration is a 'Commercial Dispute' of a 'Specified Value' [Section 10(1) of Act 4 of 2016].

2) All appeals arising out of Domestic Arbitrations filed in the High Court [Section 10(2) of Act 4 of 2016].

1. All applications under Arbitration and Conciliation Act, 1996 where the subject matter of arbitration is a 'Commercial Dispute' of a 'Specified Value' [Section 10(2) and 15(1) of Act 4 of 2016].

II. COMMERCIAL APPELLATE DIVISION

Jurisdiction of Commercial Appellate Division

1) Jurisdiction of Commercial Appellate Division is set out in three provisions of Act 4 of 2016 i.e., Section 9(2), Section 13 and Section 15(5).

2) In suits relating to a 'Commercial Dispute' (where the value of the suit when filed is not of 'Specified Value') in the event of counter claim/s by defendant/s of 'Specified Value', such a suit shall be transferred to Commercial Court or the Commercial Division, as the case may be [Section 9(1) of Act 4 of 2016].

If such a suit is not transferred, on an application by any of the parties to the suit, Commercial Appellate Division may withdraw such suits from the regular Court and transfer it to the Commercial Court or Commercial Division, as the case may be [Section 9(2)]

To be noted, such a transfer by Commercial Appellate Division under Section 9(2) shall be only to a Commercial Court over which the Commercial Appellate Division exercises supervisory jurisdiction (It follows that wherever the transfer is to a Commercial Division, it shall be to Commercial Division of that Court only).

3) All appeals from any decision of a Commercial Court or Commercial Division shall be heard by the Commercial Appellate Division [Section 13(1) of Act 4 of 2016]

If the decision of the Commercial Court or Commercial Division is an 'order', it should be an order which has been specifically enumerated as an appealable order under Order XLIII of the Code of Civil Procedure, 1908. [proviso to Section 13 of Act 4 of 2016].

An order of a Commercial Division, which is appealable under Section 37 of Arbitration and Conciliation Act, 1996, shall also be heard by Commercial Appellate Division.

Other than the above, even if there is an appeal provision under the Letters Patent of a High Court or under any other law, no appeal will lie against an order or decree of a Commercial Division or Commercial Court [Section 13(2) of Act 4 of 2016].

To be noted, if the order of a Commercial Division or a Commercial Court is one finding that it has jurisdiction to hear a Commercial Dispute under Act 4 of 2016, no appeal will lie against such an order [Section 12(3)].

4. If any pending (pending as on 23.10.2015) suit or any application under Arbitration and Conciliation Act, 1996 relating to a 'Commercial Dispute' of 'Specified Value' is not transferred to the Commercial Division or Commercial Court as mandated under Section 15(1) and 15(2), on an application by a party to the litigation, Commercial Appellate Division of the High Court shall withdraw such suit or application from the Court in which it is pending and transfer it for trial and disposal to a Commercial Court or Commercial Division, as the case may be [Section 15(5) of Act 4 of 2016].

Some important provisions of Act 4 of 2016 (This is intended to serve as a ready reckoner)

Sl. No.	Provision /Section	Subject
1	2(1)(c)	Commercial Dispute (To be noted, there are 22 sub-clauses/ categories of Commercial Dispute)
2	2(1)(i) and 12	Specified value and method for determining specified value
3	7	Jurisdiction of Commercial Division
4	9 (2), 13 and 15(5)	Jurisdiction of Commercial Appellate Division
5	12(3)	Appeal or revision will not lie against an order of Commercial Court or Commercial Division which records a finding that it has jurisdiction to hear a 'Commercial Dispute' under Act 4 of 2016
5	Proviso to 15(4)	Power of Commercial Division to prescribe new time limit for filing written statement notwithstanding the provisions of Order V of the Code of Civil Procedure
6	16(1) and Schedule	Amendments to the Code of Civil Procedure

Nomenclature for the Commercial Division

C.S (COMM DIV) ____ of 20__

Nomenclature for Commercial Arbitration Division

O.P (Commercial Div) __ of 20__

Nomenclature for the Commercial Appellate Division

APPEAL (CAD) __ of 20__

OSA(CAD) __ of 20__

Specific Averment in the plaint

Advocates are requested to make, a specific averment in one dedicated paragraph of the plaint dealing inter-alia with brief facts of the case, to the effect that subject matter of the Commercial Suit is a 'commercial dispute' as defined in Section 2(1)(c) and is of 'Specified Value' as defined in section 2(1)(i) read with Section 12 of Act 4 of 2016.

If the suit falls under the first proviso or the second proviso of section 7 of Act 4/2016 there shall be an averment to that effect in the plaint as per the above directions.

// By Order //

HIGH COURT, MADRAS :
DATED : 31.01.2018 :

C. KUMARAPPAN
REGISTRAR (JUDICIAL) (FAC)
