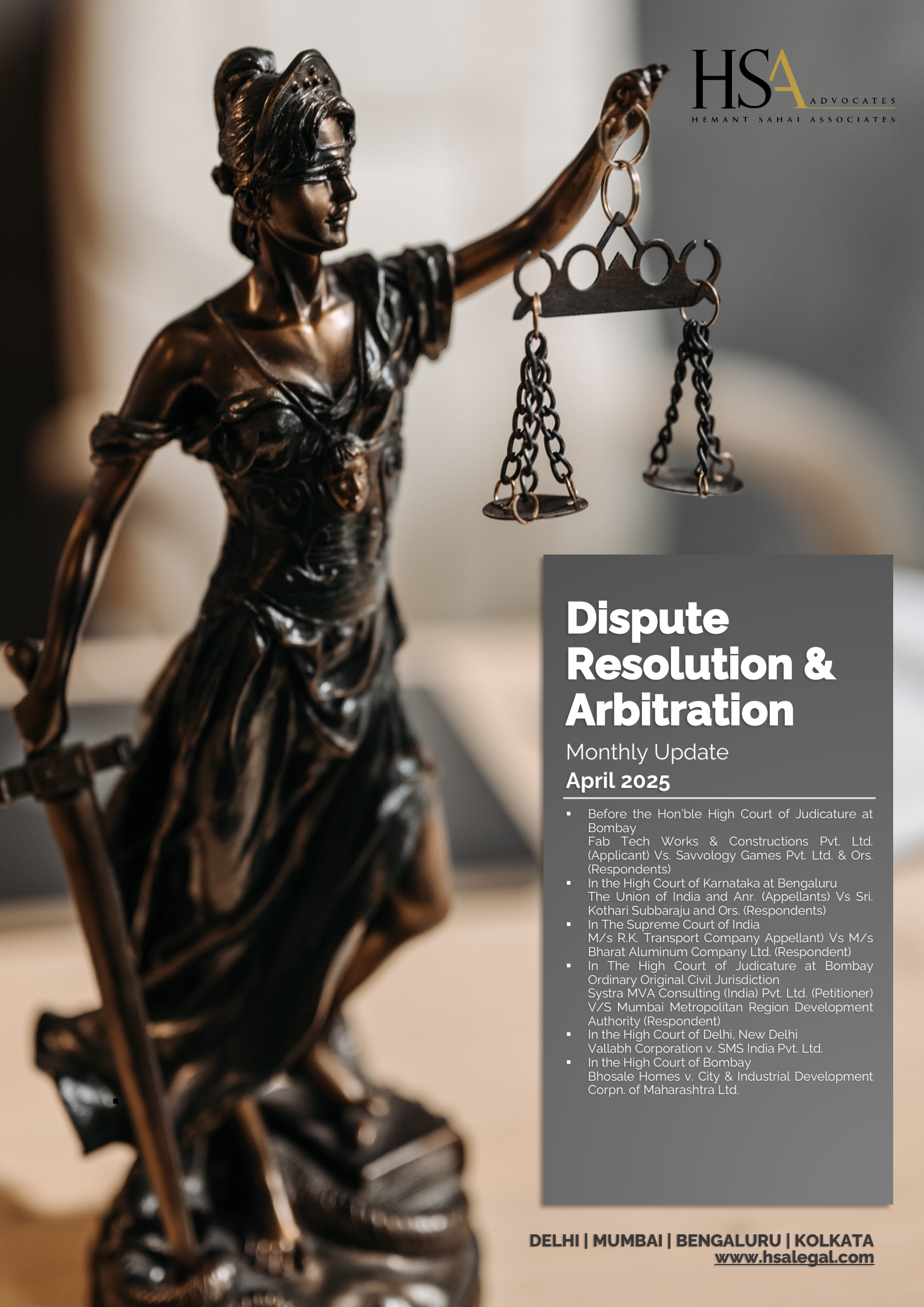

HSA ADVOCATES
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Dispute Resolution & Arbitration

Monthly Update

April 2025

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DISPUTE RESOLUTION AND ARBITRATION UPDATE

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Before the Hon'ble High Court of Judicature at Bombay

Fab Tech Works & Constructions Pvt. Ltd. (Applicant) Vs. Savvology Games Pvt. Ltd. & Ors. (Respondents)

Commercial Arbitration Petition No. 790 of 2024

Background facts

- In the present case, Fab Tech Works & Constructions Pvt. Ltd. (Applicant) and Savvology Games Pvt. Ltd. & Ors. (Respondent) entered into an Investment Agreement dated March 30th, 2021 (Agreement). Thereafter, owing to certain disputes and differences between the parties, the Applicant lodged a Commercial Arbitration Petition under Section 9 of the Arbitration and Conciliation Act, 1996 (Act) before the Hon'ble Bombay High Court (Hon'ble Court).
- Thereafter, the Ld. Judge of the Hon'ble Court had granted certain interim reliefs under Section 9 of the Act, vide an order dated July 22nd, 2024. Further, the Applicant had already invoked arbitration under the Agreement on 28 June 2024, to which the Respondent had replied on July 8th, 2024, and the Applicant also filed a Commercial Arbitration Application before the Hon'ble Court under Section 11 of the Act, seeking for the appointment of an arbitrator.
- However, the Respondent resisted the invocation of arbitration on the ground that the same was not maintainable owing to two parallel proceedings, being the petition under the Section 9 of the Act seeking interim reliefs and an application under Section 11 of the Act seeking appointment of an arbitrator.

Issue(s) at hand

- The following issue was before the Hon'ble Court:
  - Whether invocation of Section 9 & Section 11 of the Act constitute as parallel proceedings?

Findings of the Court

- At the outset, the Hon'ble Court noted that whether there are disputes and differences between the parties as set out in the invocation notice, and whether such disputes deserve to be dealt with

one way or the other, would fall in the domain of the arbitral tribunal, which is required to be appointed pursuant to Section 11 of the Act.

- The Hon'ble Court also opined that the Respondent had erred in terming the invocation of proceedings under Section 9 and Section 11 of the Act as 'parallel proceedings'. The Hon'ble Court differentiated that while Section 9 provides interim measures to protect the subject matter of arbitration, ensuring no party undermines the arbitral process, whereas the non-compliance with the agreement to refer disputes to arbitration is the basis of filing a Section 11 application, which is a limited judicial intervention mechanism solely to examine the existence of an arbitration agreement.
- Furthermore, the Hon'ble Court also noted that the objections raised by the Respondent, in so far as it was contended that there exists no disputes and differences between the parties, could not be considered by the Hon'ble Court and the Respondent would be within its right to raise the said objection in an application under Section 16 of the Act, before the arbitrator.
- Therefore, finding no merit in the objections raised by the Respondent, the Hon'ble Court disposed off the Section 9 Petition and the Section 11 Application, thereby appointing a sole arbitrator to adjudicate upon the disputes and differences between the parties arising from the agreement.

HSA
Viewpoint

In our view, the decision passed by the Hon'ble Bombay High Court strengthens the judiciary's pro-arbitration approach by dispelling the misconception that proceedings under Section 9 and Section 11 of the Act would constitute 'parallel proceedings'. While Section 9 provides interim measures to protect the subject matter of arbitration, ensuring no party undermines the arbitral process, whereas the non-compliance with the agreement to refer disputes to arbitration is the basis of filing a Section 11 application, which is a limited judicial intervention mechanism solely to examine the existence of an arbitration agreement. Furthermore, the Hon'ble Court has rightly reaffirmed an arbitral tribunal's autonomy, as envisaged in the Act, to deal on issues and objections relating to the jurisdiction of the arbitral tribunal.

In the High Court of Karnataka at Bengaluru
The Union of India and Anr. (Appellants) Vs. Sri. Kothari Subbaraju and Ors. (Respondents)

Miscellaneous First Appeal No. 6525 of 2016

Background facts

- In the instant case, the Union of India through the south western railway ("Appellant"), and Sri Kothari Subbaraju, a railway contractor ("Respondent"), entered into a contract for execution of certain railway-related works.
- However, certain disputes arose between the Appellant and Respondent in respect to the contract, and accordingly the dispute was referred to arbitration. The Arbitral Tribunal passed an award in favour of the Respondent, allowing several monetary claims raised under the contract.
- Aggrieved by certain portions of the award, the Respondent challenged the award before the Hon'ble City Civil Court, under Section 34 of the Arbitration and Conciliation Act, 1996 ("Act"). The Ld. District Judge, vide order dated March 31st, 2016, partly allowed the application filed under Section 34 of the Act and modified the arbitral award by enhancing the amounts awarded under the claims.
- Being aggrieved by the order dated March 31st, 2016 passed by the Ld. District Judge, the Appellant filed the present appeal under Section 37(1)(c) of the Act before the Hon'ble High Court of Karnataka at Bengaluru ("Hon'ble Court").

Issue(s) at hand?

- Whether the Ld. District was correct in enhancing the amounts awarded in arbitral award, thereby modifying the arbitral award?

Findings of the Court

- At the outset, the Hon'ble Court relied on the judgment in the case of S.*V. Samudram vs. State of Karnataka*[1], and held that a Civil Court, while exercising powers under Section 34 of the Act, does not have the authority to modify an arbitral award, as the powers under Section 34 are limited only to setting aside an award on the grounds explicitly provided in the statute and do not include the power of modification.
- The Hon'ble Court further noted that the Ld. District Judge, while deciding the application filed under Section 34 of the Act, had modified the arbitral award in respect of the claims by enhancing the amount, thereby acting beyond the jurisdiction vested by the Act.
- The Hon'ble Court further held that no power is vested with the Court of learned District Judge to modify or alter an arbitral award as it could be done in an appeal. The District Judge ought to have limited their inquiry to the grounds under Section 34 and not re-appreciated or altered the merits of the arbitral findings.
- In view of the above, the Hon'ble Court allowed the appeal, and thereby set aside the order dated March 31st, 2016 passed by the Ld. District Judge.

HSA
Viewpoint

In our view, while the Hon'ble Court has held that the Ld. District Judge travelled beyond the powers conferred under Section 34 of the Act by modifying the arbitral award, the said issue will attain finality once the Hon'ble Supreme Court, before which the same issue is pending adjudication, decides it. The Hon'ble Court has unequivocally reiterated that the powers under Section 34 are limited to either setting aside the award on specific grounds mentioned therein or refusing to do so; there is no scope for reappreciation or alteration of the award, which aligns with the principle of minimal judicial intervention in arbitration proceedings

In The Supreme Court of India

M/S R.K. Transport Company (Appellant) Vs. M/s Bharat Aluminum Company Ltd. (Respondent)

Civil Appeal No. 4763 of 2025

Background facts

- M/S R.K. Transport Company ("Appellant") and M/S Bharat Aluminum Company Ltd. ("Respondent") entered into a contract on April 1st, 2002 ("contract"), for bauxite mining and delivery.
- Dispute arose between the Appellant and Respondent under the contract relating to payment. In view of the same, the dispute was referred to arbitration.
- An arbitral award dated April 9th, 2022 was passed in favour of the Appellant for Rs 51,33,40,100/. The signed copy of the arbitral award was delivered to the Respondent on April 9th, 2022.
- The Respondent filed an application under Section 34 of the Arbitration and Conciliation Act, 1996 ("Act"), for setting aside of the arbitral award on July 11th, 2022.
- The Trial Court passed an ex-parte order dated July 13th, 2022, stating that the Application filed by the Respondent under Section 34 of the Act was within the limitation period. The Trial vide the said order dated July 13th, 2022, also directed the Respondent to deposit 50% of the amount granted in favour of the Appellant in the arbitral award.
- The Appellant challenged the order of the Trial Court dated July 13th, 2022, by filing a Writ Petition. The High Court, while hearing the Writ Petition, granted liberty to the Appellant to file a recall application as the Trial Court had passed an ex-parte order.
- In view of the above, the Appellant filed a recall application before the Trial Court. The recall application was allowed vide order dated April 25th, 2023.
- In the order dated April 25th, 2023, the Trial Court also held that the Application filed by the Respondent under Section 34 of the Act is barred by limitation.
- Being aggrieved by the order dated April 25th, 2023, the Respondent filed an appeal under Section 37 of the Act.
- The Appeal filed by the Respondent was allowed by the High Court. The High Court also remanded the parties to appear before the Trial Court.
- Being aggrieved by the order of the High Court, the Appellant filed the present Appeal.

Issue(s) at hand?

- Whether the 3-month limitation period under Section 34(3) of the Act excludes the day on which the award was received as per Article 12 of the Limitation Act 1963 and extends to the next working day if the deadline falls on a court holiday as per Section 4 of the Limitation Act 1963?

Findings of the Court

- At the outset, the Hon'ble Court relied on the judgement in the case of *State of Himachal Pradesh v. Himachal Techno Engineers*[1] and *State of West Bengal v. Rajpath Contractors and Engineers Ltd*[2] and held that Section 12(1) of the Limitation Act, 1963 applies to applications filed under Section 34(3) of the Act. Accordingly, the date on which the arbitral award is received by the party must be excluded while computing the limitation period for challenging the arbitral award.
- The Court further relied on the judgement in the case of *My Preferred Transformation & Hospitality Pvt Ltd v.Faridabad Implements Pvt Ltd*[3] and held that when the last day for filing an application under Section 34(3) of the Act falls on a court holiday, then Section 4 of the Limitation Act 1963 becomes applicable and thereby allowing application to be filed on the next working day.
- Applying the above principles to the facts of the present case, the Hon'ble Court observed that the arbitral award was received by the respondent on April 9th,2022. Therefore, excluding that day, the limitation period for filing an application under Section 34(3) of the Act commenced on April 10th,2022.
- The Hon'ble Court further observed that the limitation period for filing an application to set aside an arbitral award is three calendar months from the date of receipt of the award. Additionally, the Hon'ble Court observed that in the present case, the three-month period ended on July 9th, 2022, which fell on a Second Saturday, a court holiday. Therefore, by virtue of Section 4 of the Limitation Act, 1963, which provides that if the prescribed period for any legal proceeding expires on a day

[1] (2010) 12 SCC 210
[2] (2024) 7 SCC 257
[3] 2025 INSC 56

when the court is closed, the proceeding may be instituted on the next working day. In view of the same, the Hon'ble Court held that the application filed on July 11th, 2022 (Monday) was valid and within the prescribed limitation period.

- The Hon'ble Court held that since there was no delay in filing the application under Section 34 of the Act, the proviso to Section 34(3) of the Act, which allows for an additional 30 days in filing such application upon showing sufficient cause, was not applicable to the present case.
- On the issue of deposit of the awarded amount, the Hon'ble Court found no infirmity in the direction of the High Court requiring the respondent to deposit 50% of the award amount, with liberty given to the appellant to withdraw the same upon furnishing a bank guarantee.
- Accordingly, the Hon'ble Court upheld the judgment of the High Court and disposed of the appeal.

HSA
Viewpoint

The judgment provides much-needed clarity on computing the limitation period under Section 34 of the Act. It confirms that the date of receipt of the award is to be excluded while calculating the limitation period for filing an application under Section 34 of the Act. This interpretation ensures consistency and prevents miscalculation. The Court also reaffirmed that if the last day for filing an application under Section 34 of the Act falls on a court holiday, then the application can be filed on the next working day as per Section 4 of the Limitation Act, 1963, promoting procedural fairness.

In The High Court of Judicature at Bombay
Ordinary Original Civil Jurisdiction
Systra MVA Consulting (India) Pvt. Ltd. (Petitioner) V/s. Mumbai Metropolitan Region Development Authority (Respondent)

2025 SCC OnLine Bom 342

Background facts

- The Mumbai Metropolitan Region Development Authority (MMRDA) ("Respondent") published a tender notice for the appointment of a General Consultant for three Metro lines in Mumbai. Systra MVA Consulting (India) Pvt. Ltd. ("Petitioner") won the contract with a bid and was issued a Letter of Acceptance (LOA) by MMRDA. Originally set for a duration of 42 months, the contract was later extended for a further period. Thereafter, Petitioner sought extension of term of contract, which was granted by the Respondent and the term of the contract was accordingly extended.
- On January 3rd, 2025, the Respondent issued a termination notice to the Petitioner, unilaterally cancelling the contract without providing any justification. In response, the Petitioner contested this abrupt termination and filed a Petition before the Bombay High Court ("HC") under Article 226 of the Constitution pleading judicial review and seeking to quash the impugned notice.
- The Petitioner contested that the Respondent's decision breached principles of fairness and reasonableness enshrined in Article 14 of the Constitution. Further, it stated that the absence of any stated reasons in the termination notice rendered it legally untenable. It also contested that the existence of an arbitration clause does not preclude judicial review when the termination is arbitrary.
- The Respondent cited Clause 2.8.1(f) of the contract, which according to the Respondent granted it absolute discretion to terminate without providing reasons.

Issue(s) at hand?

- Whether State or its instrumentality is immune from satisfying public duty, when acting under private law laid down in its contractual scope?
- Whether a court can issue writ to correct contractual wrongs committed by the State to ensure fairness, reasonableness and equity?
- Whether the court is precluded from exercising judicial review, if the contract refers to alternate remedy in case any dispute arises?

Findings of the Court

- The HC ruled that MMRDA's unilateral termination of the contract without justification was arbitrary, unfair, and unreasonable. While contractual terms may permit termination at discretion, the court emphasised that such power cannot be exercised in a dishonest, capricious, or unreasonable manner, particularly by a public authority. The court took a note of Clause 2.8.1 (f) of the General Conditions of Contract and rejected its interpretation to mean that the Respondent has the license to act arbitrarily without assigning any reasons.
- Consequently, the contract's termination without valid justification was deemed an abuse of discretion by MMRDA. The court observed that a court has the power of judicial review even if the Respondent has acted in accordance with the contractual terms to ensure reasonableness, fairness, natural justice and non-discrimination in the nature of the dealing.
- In response to the Respondent's contention that the parties should have been referred to arbitration as provided for in the contract, the court observed that judicial review is applicable when a State action is arbitrary. The court relied on the Apex Court's ruling in *MP Power Management Co. Ltd. v. Sky Power Southeast Solar India Pvt. Ltd.*[1], the Court reiterated that even contracts not governed by statute, when entered into by public authorities, remain subject to judicial examination in case they are arbitrary. The court noted that it is not barred from exercising the power of judicial review merely on the ground of availability of alternate remedy as contested by the Respondent. The Court also relied on the Apex Court's ruling in *Subodh Kumar Singh Rathour v. Chief Executive Officer*[2], wherein it was held that the cancellation of public tenders without valid justification is open to judicial review.

[1] 2023 SCC OnLine SC 703
[2] 2024 SCC OnLine SC 1682

- The court further held that a public authority cannot arbitrarily terminate a contract, especially when public interest and taxpayer money are involved. It also noted that a speaking order of the Respondent was not in place which further signified that the termination was unreasonable.
- The impugned notice dated January 3rd, 2025 was quashed and set aside. The court directed the Respondent to take a fresh decision regarding the continuation or termination of the Petitioner's contract after hearing it.

HSA
Viewpoint

The ruling underscores the obligation of the State to maintain fairness, reasonableness and equitability in contractual settings. The court rightly held that even if there is an arbitration clause or alternate remedy available in the contract, judicial review can be exercised if the termination of a contract is done in an unfair and unreasonable manner. By quashing the impugned notice, the judgment clarifies that state bodies cannot exercise contractual discretions in an arbitrary manner. The court has rightly directed the Respondent to reconsider its decision of unilateral termination of the contract, post hearing the Petitioner and passing a reasoned order justifying the same.

In The High Court of Delhi at New Delhi
Vallabh Corporation v. SMS India Pvt. Ltd.

2025 SCC OnLine Del 1795

Background facts

- The dispute arose under a Service Order and Purchase Order executed between *Vallabh Corporation* ("***Petitioner***") and *SMS India Pvt. Ltd*. ("***Respondent***") for civil and associated works related to a workshop project. The Petitioner, a registered Micro, Small and Medium Enterprise (MSME), claimed significant outstanding dues from the Respondent post-completion of work. Although an arbitration clause was embedded in the contract, the Petitioner initially invoked the statutory framework of the *Micro, Small and Medium Enterprises Development Act, 2006* ("***MSME Act***") and filed a reference before the MSME Facilitation Council, Gandhinagar.
- With no action from the Council and mediation failing via the Delhi High Court Mediation and Conciliation Centre, the Petitioner sought appointment of an arbitrator under *Section 11(6)* of the *Arbitration and Conciliation Act, 1996* ("***Arbitration Act***").

Issue(s) at hand?

- Can a party that has invoked the statutory remedy under *Section 18* of the *MSME Act* directly approach the High Court under *Section 11(6)* of the *Arbitration Act* for appointment of an arbitrator if the Facilitation Council fails to act?

Findings of the Court

- The Delhi High Court allowed the petition under *Section 11(6),* holding that the Petitioner's action was justified in view of the prolonged inaction by the Facilitation Council. Relying on the Supreme Court's decision in *Gujarat State Civil Supplies Corpn. Ltd. v. Mahakali Foods (P) Ltd.*, (2023) 6 SCC 401, the Court reaffirmed that the *MSME Act* overrides the *Arbitration Act* by virtue of being a special legislation. However, the Court clarified that this overriding effect does not oust the jurisdiction of courts under *Section 11(6)* of the *Arbitration Act* in cases where the Council fails to fulfil its duties post-mediation.
- The Court noted, that once the statutory mediation under the *MSME Act* fails and the Facilitation Council takes no steps towards arbitration, the aggrieved party is not compelled to remain in limbo. It can seek court intervention under the *Arbitration Act* to avoid indefinite delay. In doing so, the Court harmonised the provisions of the two Acts, acknowledging the legislative intent behind both—timely redress for MSMEs and efficient arbitral resolution of disputes.
- Accordingly, the Court appointed a Sole Arbitrator and directed the arbitration to proceed under the aegis of the *Delhi International Arbitration Centre*.

HSA
Viewpoint

This judgment reaffirms a critical balance in the legal framework governing MSME disputes: while the *MSME Act* is a beneficial legislation with overriding effect, it is not self-executing to the point of paralysing access to justice in the event of institutional inertia. The Delhi High Court's decision is pragmatic, recognising that procedural bottlenecks at the level of statutory authorities—despite a strong legislative mandate—can defeat the very objectives of expeditious redress.

The ruling also highlights a maturing judicial interpretation that avoids over-formalisation of arbitral mechanisms under special statutes. It provides necessary clarity that once the mediation contemplated under *Section 18* of the *MSME Act* has failed and the Facilitation Council does not proceed further, recourse under *Section 11(6)* of the *Arbitration Act* is not just permissible but appropriate. This interpretation also encourages better procedural discipline from Facilitation Councils and restores agency to MSMEs in steering their dispute resolution trajectory.

In effect, the Court has fostered a functional reading of overlapping statutes that avoids rendering MSME protections otiose while safeguarding the principle of party autonomy in arbitration. It is a desirable reaffirmation that procedural law must enable, not obstruct, the delivery of substantive justice.

In the High Court of Bombay
Bhosale Homes v. City & Industrial Development Corpn. of Maharashtra Ltd.

2025 SCC OnLine Bom 653

Introduction

- The Bombay High Court's judgment in *Bhosale Homes v. City & Industrial Development Corporation of Maharashtra Ltd.,* underscores key legal principles regarding land title disputes and the jurisdictional limitations of writ courts under Article 226 of the Constitution of India. The case involved the disputed ownership of Plot No. 15, Sector 9, Ulwe, Navi Mumbai, allotted under the City and Industrial Development Corporation of Maharashtra (*hereinafter referred to as the **"CIDCO"***) 12.5% Scheme for Project Affected Persons (*hereinafter referred to as the **"PAP"***), where *Bhosale Homes* challenged CIDCO's Stop Work Notice, arguing it violated natural justice and caused financial losses. A division bench, comprising Justice A.S. Gadkari and Justice Kamal Khata, ruled that land title disputes cannot be adjudicated through writ petitions and must be resolved by civil courts, distinguishing the case from *Sai Krupa Builders v. CIDCO*, as CIDCO itself disputed the ownership based on a Collector's report. The Court held that mere possession or leasehold rights do not confer ownership when the original title is contested and reaffirmed that writ jurisdiction cannot determine ownership rights, which require civil proceedings for a detailed factual examination. This decision serves as a critical precedent for developers, investors, and financial institutions, emphasizing the necessity of thorough due diligence before acquiring land or investing in large-scale projects.

Background facts

- Lease Allotment and Possession:

  Bhosale Homes (*hereinafter referred to as the "petitioner"*), a real estate developer, was allotted Plot No. 15, Sector 9, Ulwe, Navi Mumbai, under CIDCO's 12.5% Scheme for PAP. A registered lease agreement was executed on September 15th, 2008, granting Bhosale Homes leasehold rights over the 950 sq. meter plot. The petitioners remained in uninterrupted possession of the land.

- Development Proposal and Subsequent Objections:

  On March 6th, 2014, the petitioner submitted a Development Proposal to CIDCO, seeking approval for construction on the allotted plot. However, CIDCO later raised objections, asserting that the land originally belonged to Sir Mohammed Yusuf Haji Ismail Trust.

- Stop Work Notice and Legal Challenge:

  On August 31st, 2016, CIDCO issued a Stop Work Notice, rejecting the development proposal on the grounds that the petitioner had no legal title over the land. Bhosale Homes challenged this action, arguing that CIDCO's decision was arbitrary, illegal, and issued without notice or a hearing, thereby violating principles of natural justice. The petitioner also highlighted those substantial financial investments had already been made, and several buyers had booked residential and commercial units in the project.

- Appeal in Supreme Court:

  Consequently, the Appellant Bank filed an appeal in the Supreme Court of India challenging the judgment of the High Court.

Issue(s) at hand?

- Whether CIDCO's Stop Work Notice was legally valid and whether Bhosale Homes had a right to continue construction based on leasehold rights despite the ownership dispute, and whether such a dispute could be adjudicated under writ jurisdiction or if it required resolution through civil proceedings?

Findings of the Court

- Writ Jurisdiction Not Maintainable for Ownership Disputes:

  The Court held that ownership disputes involving contested land titles cannot be adjudicated through writ petitions under Article 226. Since CIDCO itself disputed the petitioner's ownership claim, the matter required a detailed factual inquiry, which falls within the jurisdiction of civil courts rather than writ courts. Since the ownership of the land was not conclusively established, the Court directed that Bhosale Homes must seek relief through civil litigation. It reaffirmed that land title disputes must be adjudicated by civil courts and not under writ jurisdiction.

- Mere Possession Does Not Confer Ownership:

  The Court clarified that mere possession, or leasehold rights do not amount to ownership. While Bhosale Homes had a registered lease, the title to the land was under dispute due to the claim made by Sir Mohammed Yusuf Haji Ismail Trust. In such cases, leasehold rights alone cannot override competing ownership claims.

- Principles of Natural Justice Not Violated:

  The petitioner argued that the Stop Work Notice was issued without a hearing, violating natural justice. However, the Court found that Bhosale Homes was given sufficient opportunity to respond, and CIDCO acted within its authority in issuing the notice due to the uncertainty over ownership.

- Sai Krupa Builders Case Not Applicable:

  The petitioners relied on the precedent set in *Sai Krupa Builders v. CIDCO*, which allowed construction despite CIDCO's objections. However, the Court distinguished the two cases, noting that in Bhosale Homes' case, the ownership itself was disputed, making Sai Krupa Builders inapplicable.

- Dismissal of the petition:

  Based on the above findings, the Court dismissed the petition, holding that Bhosale Homes could not seek relief under Article 226 and must pursue an appropriate civil remedy to establish its ownership.

HSA
Viewpoint

In the present case, the Bombay High Court has rightly emphasized that there exists a substantive dispute over the title of the land in question, as CIDCO received communications from the Collector asserting that the property belonged to Sir Mohammed Yusuf Trust under the **12.5% Scheme**. Unlike the precedent in *Sai Kripa Developers v. CIDCO*, where the title was not contested, the Court noted that CIDCO had valid grounds to issue the Stop Work Notice and reject the development proposal based on this unresolved ownership dispute.

The judgment correctly held that such disputes regarding land title cannot be adjudicated under writ jurisdiction under Article 226 of the Constitution. By directing the Petitioners to approach a civil court for resolution, the Court reinforced the principle that complex property disputes must be addressed in forums equipped to resolve questions of fact and law related to ownership.

By dismissing the Writ Petition while granting liberty to pursue remedies in the Civil Court, the High Court appropriately balanced procedural fairness with jurisdictional limitations. This decision underscores the importance of resolving title disputes before proceeding with development projects and highlights the necessity of proper due diligence in real estate transactions.

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