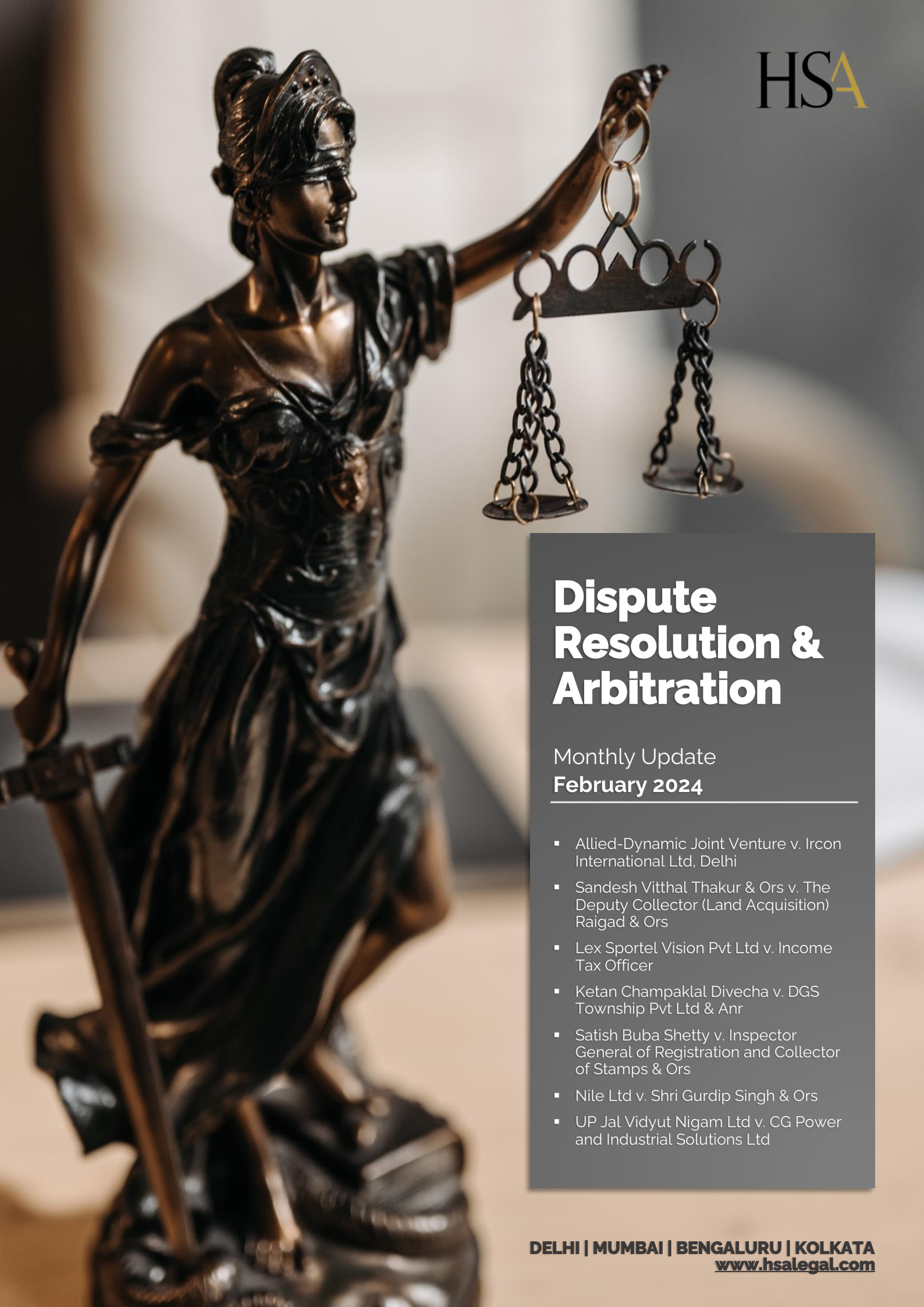

HSA

Dispute Resolution & Arbitration

Monthly Update

February 2024

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- Sandesh Vitthal Thakur & Ors v. The Deputy Collector (Land Acquisition) Raigad & Ors
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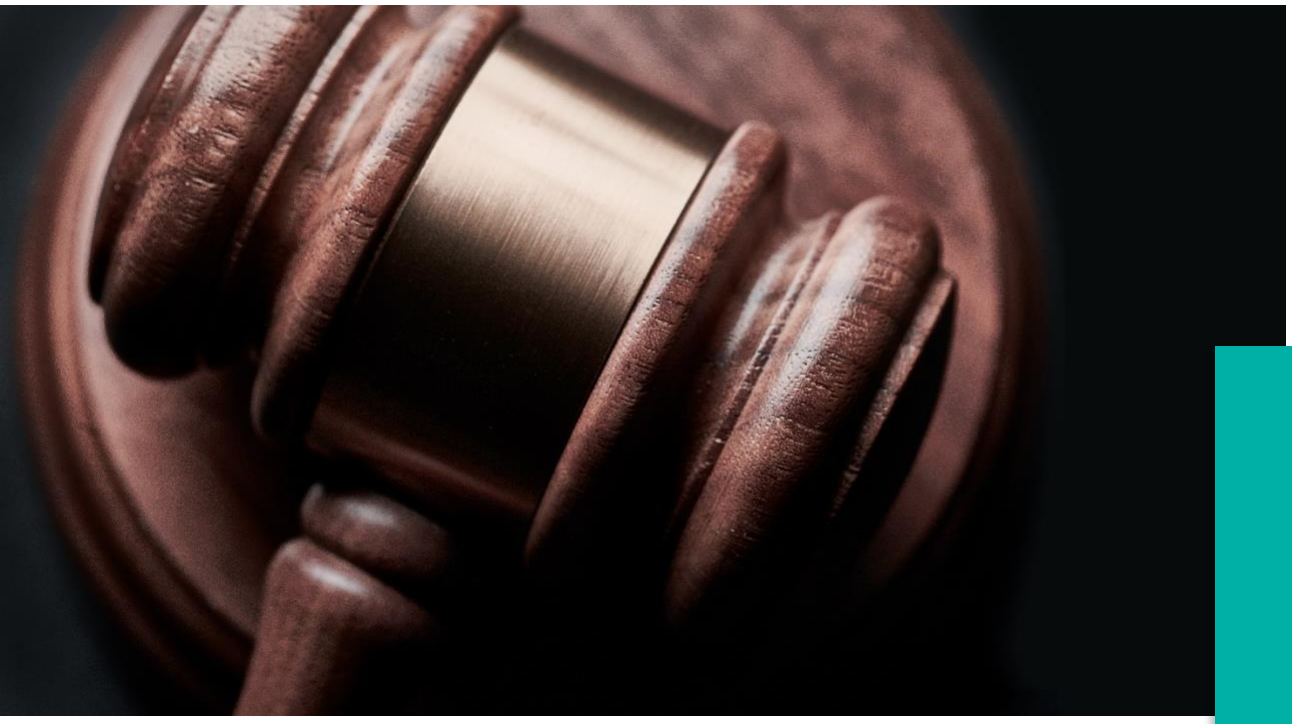
DISPUTE RESOLUTION AND ARBITRATION UPDATE



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Allied-Dynamic Joint Venture v. Ircon International Ltd, Delhi

Delhi High Court | OMP (COMM) 451/2016

Background facts

- A contract was awarded by Ircon International Ltd, Delhi (**Respondent**) to Allied-Dynamic Joint Venture (**Petitioner**) on October 25, 2010, for various work (**Project**).
- The Petitioner and the Respondent entered into an Agreement dated December 1, 2010 (**Agreement**) in respect of the contract awarded by the Respondent.
- The total value of the Project was INR 21,97,61,199 and the term for completion was determined as 11 months ending on September 24, 2011.
- Various issues arose which lead to delay in completion of the Project. However, both the Petitioner and Respondent mutually agreed to extend the completion period to March 31, 2014.
- The Project was finally completed in March 2014 and an amount of INR 23,09,58,770 was released for the same.
- After completion, the Petitioner had various claims against the Respondent with respect to incorrect deductions and compensation for the delay.
- All the claims raised by the Petitioner were referred to a Sole Arbitrator, who rejected all the claims of the Petitioner.
- Being aggrieved by the said Award, the Petitioner has filed the present Petition.

Issues at hand?

- Whether the Arbitrator who was an employee of the Respondent rendered the Award in a biased manner?
- Whether compensation in respect of the delay in handing over of the project site should be awarded since the same is admitted by the Respondent?
- Whether claims of the Petitioner with respect to illegal deduction and compensation should have been allowed?

Decision of the Court

- At the outset, the Court held that the Agreement itself provides that an employee can be appointed as a Sole Arbitrator provided such an employee is not connected with the work in question.
- Further, it was held that the Sole Arbitrator was appointed as far back as October 21, 2014, however the Petitioner at no point sought for a formal adjudication for change of arbitrator on the grounds of biasness nor availed any remedy on this ground. Hence, the Court held that the Petitioner cannot wait for the final Award and then approach the Court with the allegation of biasness of the Sole Arbitrator.
- The Court also held that the decision of the Supreme Court in the case of ***Shree Vishnu Constructions v. The Engineer in Chief Military Engineering Service***[1] is not applicable to the present case. The Court further held that Petitioner participated in the proceedings fully and hence after an Award is passed the Petitioner cannot challenge the said order on the basis of biasness of the Sole Arbitrator as the same would constitute as waiver of right of the Petitioner under Section 4 of the Arbitration and Conciliation Act, 1996 (Act).
- The Court held that delay in completion of the Project occurred due to the conduct of both the Petitioner as well as the Respondent and they had mutually agreed to extend the date of completion of the Project. The Court observed that the Petitioner was also paid an amount of INR 1,08,32013 as per the Price Variation Clause (PVC) in the Agreement. The Court also held that the claims of the Petitioner were based on hypothetical calculations and were not based on evidence at all. Hence in view of the above the Court held that there are no grounds for interference with the decision of the Sole Arbitrator in rejecting the claim of the Petitioner.
- Finally, the Court relied on the judgement in the case of ***Haryana Urban Development Authority, Karnal v. Mehta Construction Company***[2] and held that a Court cannot enter into fact finding in a Petition filed under Section 34 of the Act and cannot set aside an Award on the ground of misappreciation of evidence.
- Hence, in view of the above the Court dismissed the Petition.

HSA
Viewpoint

This decision reaffirms that merely on the reasoning of misappreciation of evidence an Arbitral Award cannot be set aside since it does not constitute as a ground for challenging an Arbitral Award under Section 34 of the Act. The significance of the judgment is that it makes it clear and removes all ambiguities that an Arbitral Award cannot be challenged on the grounds of biasness of an Arbitrator if the parties have fully participated in the Arbitration and have not sought for a formal adjudication for the change of the Arbitrator on this ground during the Arbitral proceeding. The judgement reinforces the principle that parties must address concerns regarding biasness of an Arbitrator during the Arbitral proceedings.

Sandesh Vitthal Thakur & Ors v. The Deputy Collector (Land Acquisition) Raigad & Ors

Bombay High Court I 2024 SCC Online Bom 151

Background facts

- In the village of Jasai, Tal-Panvel, District-Raigad, the MTHL Sea Link Project (**Project**) aimed to acquire land for the Sewri-Nhava Road as part of the New Bombay Project, which was planned by City and Industrial Development Corporation of Maharashtra Ltd (**CIDCO**) and the responsibility of execution was taken by the Mumbai Metropolitan Region Development Authority (**MMRDA**). The aim of this Project was to build a 22-kilometer, 6-lane bridge to enhance connectivity between Navi Mumbai and Mumbai City.
- The purpose was to acquire land admeasuring about 15.79.10 hectares, out of which only 8.66.00 hectares was acquired by CIDCO from the respective landowners. With regards to the remaining 7.13 hectares of land, which also included the lands of the Petitioners, acquisition proceedings were initiated under the Land Acquisition Act, 1894 (**Act**).
- On July 2, 2009, a notification was issued in the Government Gazette under Section 4 of the Act, setting the wheels in motion for the Sewri-Nhava Road Project. Individual notices were sent to the concerned landowners under Section 4(1) of the 1894 Act, including the Petitioners.
- The Project's urgency led to ignorance of enquiry under Section 5A of the Act and legal declaration under Section 6 of the Act was finalized on December 22, 2012 by officially designating the proposed land acquisition. Thereafter, it was first published in the Government Gazette on June 19, 2012, and later in the local newspapers on July 18, 2022.
- Mr. Thakur, advocate for the Petitioners, acknowledged a claim that the acquisition proceedings have lapsed under Section 11A of the Act as no Award was rendered within 2 years from the final date of publication of the Section 6 declaration. Citing a Supreme Court ruling (***The Executive Engineer, Goshikhurd Project Ambadi, Bhandara, Maharashtra Vidharbha Irrigation Development Corporation v. Mahesh & Ors***[3]), which emphasized that if acquisition proceedings initiated under the Act remain unresolved when the Rehabilitation and Resettlement Act, 2013

[1] 2023 LiveLaw (SC) 417
[2] 2022 LiveLaw(SC) 348
[3] (2022) 2 SSC 772

(2013 Act) takes effect, an Award must be rendered within a period of 1 year from the date when the 2013 Act came into force that is on January 01, 2024. Therefore in this case it sets a deadline for the Award by December 31, 2014.

- However, he contended that despite challenges and legal twists, the Award in question surfaced only on April 22, 2015, well beyond the stipulated period. He sought relief, arguing in line with the Supreme Court's precedent, that the acquisition proceedings should be deemed lapsed.
- Ms. Bane, representing the State, countered Mr. Thakur's arguments by citing a Supreme Court judgement (***Delhi Airtech Services Pvt Ltd & Anr v. State of UP & Anr***[4]) asserting that Mr. Thakur's claims were misconceived.
- The urgency clause was invoked by the State under Section 17 of the Act, and in this instance, there was no question of the acquisition proceeding lapsing. However, Ms. Bane argued that the Award was not passed within the stipulated time. For this reason, a meeting was conducted with the landowners through satellite. She then contended that the Award was passed on April 20, 2015, and declared on April 22, 2015, falling under the purview of the 2013 Act, but the procedural requirements and opposition caused the 2-day delay, which was fully justified.
- However, she questions the inordinate delay in approaching the Court under Article 226 of the Constitution by citing a Supreme Court case of ***Banda Development Authority, Banda v. Motilal Agarwal & Ors***[5]. She contended that the aforementioned Writ Petitions were without merit and should be dismissed with costs for all the grounds mentioned above.

Issues at hand?

- Whether there was any delay in approaching the Court for relief, considering the period between the passing of the Award and the filing of the Writ Petitions?
- Whether the possession of the acquired lands shall revert to the Petitioners, and what entitlement they have in terms of compensation?
- Whether the state government failed to follow conditions after invoking the urgency clause under Section 17 of the Land Acquisition Act, 1894?

Decision of the Court

- The Division Bench of Justices BP Colabawalla and MM Sathaye at Bombay High Court, on January 17, 2024, directed the state to provide compensation to the landowners affected by the Mumbai Trans Harbour Link (**MTHL**) Project, commonly referred to as Atal Setu. The Court specified that compensation should be granted in accordance with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.
- The Court held that the State government did not follow conditions after invoking the urgency clause. According to the Court, for the urgency clause to be effective, the government must pay 80% of the estimated compensation, take possession, and vest the land with the government.
- In the present case, the Court carefully considered the invocation of the urgency clause under Section 17 of the Act, noting that despite its invocation no compensation was paid, and possession was not taken until the filing of the Petitions was done.
- The Court disagreed with the State's assertion that the urgency clause safeguarded against lapsing, especially given the absence of compliance with Section 17(3-A) of the Act.
- Addressing the issue of delay, the Court found no inordinate delay in approaching the Court, considering the Award was passed on April 22, 2015 and the Petitions were filed between January 31, 2017 to June 27, 2019.
- Consequently, the Court held that the impugned Award was not passed within the statutory period, leading to the lapse of acquisition proceedings concerning the Petitioners' lands. While acknowledging the project's importance, the Court asserted that possession shall not revert to the petitioners, and they would only be entitled to compensation determined under the provisions of the Rehabilitation and Resettlement Act, 2013.
- The Court ordered the state to expeditiously carry out the compensation process, directed state authorities to pass fresh awards and complete the process quickly, considering the petitioners' long-standing loss without compensation.
- The Writ Petition succeeded, and the Court made the rule absolute without imposing costs.

HSA
Viewpoint

The judgment emphasizes a commitment to contemporary legal principles, prioritizing the rights of landowners affected by the Mumbai Trans Harbour Sea Link Project. By focusing on timely compensation, the Court upholds the principle that speedy procedures must not compromise the fair compensation unsettled to the affected parties. This decision ensures that land acquisition processes align with the prescribed legal framework, particularly the Right to Fair Compensation and Transparency in the Land Acquisition Act, 2013. This ruling strikes a balance between the public interest and the protection of individual property rights, affirming the need for lawful execution of land acquisition procedures. In doing so, it sets a precedent for the handling of such similar cases, promoting a legal framework that prioritizes justice and transparency in land acquisition for public projects.

[4] (2022} SSC Online SC 1408
[5] (2011) 5 SSC 394

Lex Sportel Vision Pvt Ltd v. Income Tax Officer

In The Income Tax Appellate Tribunal, Delhi | ITA No. 2397/Del/2023

Background facts

- Lex Sportel Vision Pvt Ltd, (**Applicant**) a company involved in broadcasting or sub-licensing rights to broadcast sports events, entered into agreements with several non-resident entities for the acquisition of the rights to (i) broadcast live sports events (**Live Rights**) and (ii) right to use audio-visual recording of such events for subsequent telecasting, making highlights, etc. (**Non-Live Rights**)
- The agreements and invoices pertaining to the acquisition of both these rights with the non-resident entities bifurcated the total consideration into two parts:
  - Consideration for Live Rights
  - Consideration for Non-Live Rights
- The Applicant deducted tax at source under Section 195 of the Income Tax Act, 1961 (**Act**) on payments made for the acquisition of Non-Live Rights considering it to be 'Royalty' under Section 9 (1) (vi) of the Act.
- However, the Applicant did not deduct tax at source on payments made for Live Rights.
- Considering the aforesaid facts, the Assessing Officer (AO) passed an order under Section 201 of the Act holding the assessee i.e., Applicant, in default for failure to deduct tax as royalty on Live Rights.
- The AO opined that royalty could be charged over Live Rights and therefore, the assessee should have deducted the tax accordingly. An Appeal against the decision of the AO was filed by the Applicant before Commissioner of Income Tax (Appeals) (**CIT-(A)**), however the CIT - (A) held in favor of the AO's decision.
- Aggrieved with the decision of the CIT-(A) company filed an appeal before the ITAT Delhi (**Tribunal**).

Issues at hand?

- Whether the right to broadcast Live events is a copyright?
- Whether 'Royalty' under Section 9(1)(vi) would be applicable to Live Events?

Decision of the Tribunal

- The Tribunal, after perusing the material available on record, disagreed with the AO's view that royalty could be charged on Live Rights.
- The Tribunal after relying on various judgments of the Delhi High Court, ITAT Mumbai and ITAT Delhi – ***CIT v. Delhi Race Club***[6], ***Fox Network Group Singapore Pvt Ltd v. ACIT***[7], ***Cricket Australia v. ACIT(IT)***[8], ***ESS (formerly known as ESPN Star Sports) v. ACIT***[9], ***ESPN Star Sports v. Global Broadcast News Ltd***[10], ***ADIT (IT) v. Neo Sports Broadcast Pvt Ltd***[11] and ***DDIT(IT) v. Nimbus Communications Ltd***[12] – and opined that when an agreement clearly bifurcates between consideration paid towards Live and Non-Live Rights (two distinctive heads), the tax department cannot deem the payments for Live Rights to have been made for a bouquet of rights.
- The Tribunal held that the right to broadcast live events i.e., Live Rights, does not amount to a copyright and therefore, any payment made for the same cannot be said to be chargeable to tax as a royalty under Section 9(1)(vi) of the Act.
- The Tribunal further held that the as the assessee made payments to overseas rights holders and not to any satellite operators or for use of satellites, the payments shall not come within the definition of process under Section 9(1)(vi) of the Act and tax as royalty would therefore not be applicable on the same.

HSA
Viewpoint

This decision has reaffirmed the principle that there exists a clear distinction between a copyright and a broadcasting right. It further reaffirms that a live telecast is an exercise of a broadcasting right, therefore, any payments made for a broadcasting right would not fall under the ambit of royalty under Explanation 2 to Section 9(1)(vi). Despite there being judgments addressing this issue for over a decade, AOs tend to tax live events.

[6] (2014) 51 taxmann.com 550 (Hon'ble Delhi HC)
[7] (IT) (2020) 121 taxmann.com 330 (ITAT Delhi)
[8] (ITA No. 1179/Delhi/2022) (ITAT Delhi)
[9] (ITA No. 7903/DEL/2018) (ITAT Delhi)
[10] 2008(38) PTC 477 (ITAT Delhi)
[11] (2011)133 ITD 468 (ITAT Mumbai)
[12] (2013) 20 ITR(T) 754 (ITAT Mumbai)

Ketan Champaklal Divecha v. DGS Township Pvt Ltd & Anr

Bombay High Court | Arbitration Petition (L) No. 20483 of 2023

Background facts

- A Development Agreement was executed between DGS Township Pvt Ltd (**Respondent No. 1**) and a society (**Respondent No. 2**) as per which Respondent No. 1 was to redevelop the property of Respondent No. 2 society in accordance with Regulation 33(7) (B) of the Development Control and Promotion Regulations for Greater Mumbai, 2034 (**DCPR 2034**). Respondent No.1 was to utilize the permissible Floor Space Index (FSI) as per DCPR 2034. It was agreed that if the potential to develop further increased beyond the permissible FSI, the increase would be shared in a 50:50 ratio between Respondent No. 1 and Respondent No. 2.
- Post demolition of the old structure on the property for redevelopment, it was found that the plot area was lesser than the area based on which the Development Agreement was executed. Thereafter, a Supplemental Development Agreement was executed between Respondent No.1 and the Managing Committee of Respondent No. 2.
- Subsequently, a member of Respondent No. 2, Mr. Ketan Champaklal Divecha (**Petitioner**) and some other members of the society believed that their rights under Clause 3.2 of the Development Agreement were unfairly given up by the society. The Petitioner served a notice under Clause 35 of the Development Agreement seeking to invoke arbitration. Since no reply to the same was given by the Respondents, the Petitioner filed proceedings under Section 9 and 11 of the Arbitration Act, 1996 (**Arbitration Act**).

Issue at hand?

- Whether individual members of a society being signatories of the Development Agreement are entitled to invoke an arbitration clause against developers?

Decision of the Court

- The Court agreed with the Respondents that the arbitration clause was so worded and structured that a single member could not have invoked the arbitration clause.
- The Court referred to Section 2(1)(h) of the Arbitration Act which defines 'party' and Section 7 which defines 'arbitration agreement'. The Court noted that Clause 35.2 of the Development Agreement was applicable for 'society and the members' as one party and the 'developer' as the other party. The Court concluded that an individual member does not have the capacity to invoke arbitration.
- The Court further accepted the Respondents' submission that several arbitration proceedings could be initiated by individual members for any grievances they might face in context of the Development Agreement. The grievance of the Petitioner as an individual member could have only been an arbitrable dispute had the society joined in with the member.
- In light of the observations, the Court held that neither the Petition under Section 9 nor the Application under Section 11 of the Arbitration Act could be entertained by the Court.

HSA
Viewpoint

In this case there was a peculiar arbitration clause in the Development Agreement. This decision reaffirms the importance of incorporating a well drafted dispute resolution clause which restricts the parties in such a dispute to the Society and the Developer being signatories to the Development Agreement. However, the individuals have the right to take other steps available in law and to file a writ petition in case an act is done by the developer which is against public interest or public policy. Parties to a redevelopment agreement must ensure that the arbitration clause is drafted in a manner which prevents individual members from invoking arbitration proceedings against developers and societies.

Satish Buba Shetty v. Inspector General of Registration and Collector of Stamps & Ors

Bombay High Court | 2024 SCC OnLine Bom 108

Background facts

- On November 10, 2014 the Petitioner, a retired bank officer, and Vijaykamal Properties Pvt Ltd (**Developer**) entered into an agreement to purchase an apartment in the ERA building. The aforementioned agreement was properly registered with the Registrar of Assurances on November 19, 2014, and Stamp Duty of INR 4,76,000 was paid together with registration fees of INR 30,000 via receipt number 7271 dated November 19, 2014. The Developer was required by the terms of the agreement to give the unit to the buyer by June 30, 2017.
- The Petitioner provided consideration, which was neither developed nor reimbursed by the Developer. The Petitioner was therefore forced to file a complaint with the Real Estate Regulatory Authority (**RERA**). RERA ordered the Developer to sign a Deed of Cancellation and return the consideration by order dated December 26, 2017. Owing to the Developer's failure to adhere to the order, the Petitioner was obliged to submit an Execution Application in accordance with Section 63 of the Real Estate (Regulation and Development) Act, 2016. Consequently, the Developer was subject to a penalty of INR 5,000/- per day till RERA's order dated March 13, 2018 was complied with.

- The Developer filed an Appeal with the RERA Appellate Tribunal because they felt wronged. By a judgment dated August 21, 2018, the Appellate Tribunal delayed RERA's ruling, subject to the Developer paying the remaining 50% of the due sum plus interest.
- In an order dated October 16, 2018, the Developer's Appeal was dismissed for lack of compliance, citing the its failure to comply with the Appellate Tribunal's judgement as well. The RERA Appellate Tribunal was presented with an Execution by the Petitioner.
- Following a settlement reached by the Developer and the Petitioner in the process, consent terms were executed. The Developer consented to repay the money in 4 installments as per the conditions of the permission. Consequently, on March 9, 2021, Satish Buba Shetty, the Petitioner arrived to complete a Deed of Cancellation. The RERA Appellate Tribunal then decided to dismiss the Execution Application on March 19, 2021.
- The Petitioner filed for a refund of Stamp Duty paid on the Agreement for Sale dated November 19, 2014, on March 31, 2021.
- By an order dated April 27, 2021, the Collector of Stamps denied the refund claim, stating that the proviso to Section 48(1) of the Stamp Act, 1958 did not apply since the Agreement for Sale was not terminated within the 5 years after it was executed.
- The Petitioner asked the Chief Controlling Revenue Authority to make revisions. The Chief Controlling Revenue Authority was also convinced to dismiss the appeal by a decision dated February 9, 2022 on the grounds that the registered instrument was revoked after 5 years of execution, so triggering the injunction outlined in the proviso to Section 48(1) of the Stamp Act.
- The Petitioner, being prejudiced, has requested that this Court shall use its writ jurisdiction.
- The Developer appealed the decision made in the Execution Application to the RERA Appellate Tribunal. Not even the ruling made by the RERA Appellate Tribunal was followed. Satish Buba Shetty, the Petitioner, was ordered to submit an Execution Application with the RERA Appellate Tribunal to ostensibly carry out the interim order. In the end, on March 9, 2021, Deed of Cancellation was completed. On March 31, 2021, the Petitioner submitted the claim for a refund.
- According to the circumstances, the Petitioner was not responsible for any reckless behavior or other unacceptable behavior. Promptly, the Petitioner used RERA to contact the Authorities. We carefully sought the remedies that were available to the Authorities under RERA. There is no doubt that the Petitioner was not responsible for the Cancellation Deed's execution delay.

Issues at hand?

- Whether the order dated February 9, 2022, pronounced by Chief Controlling Revenue Authority, Maharashtra State, Pune in Appeal No. 111 of 2021, is valid?
- Whether denial of refund by Collector of Stamp in pursuance to Section 48 of Maharashtra Stamp Act, 1958 was correct?

Decision of the Court

- Justice Mr. NJ Jamadar, recognizing the unique circumstances surrounding the Petitioner's reservation of an apartment for a peaceful retirement in his late 60s, acknowledged the Developer's default. This acknowledgment prompted the Petitioner to seek recourse through RERA. RERA, in turn, mandated the execution of the cancellation deed and reimbursement.
- The Court underscores that the Petitioner should not bear the brunt of judicial delays in the proceedings. In justifying the refund, the Court draws upon legal precepts such as '*lex non cogit ad impossibilia*' and '*actus curiae neminem gravabit*'.
- Furthermore, the Court's ruling overturns the instructions of the revenue authorities. The emphasis is placed on principles of justice, equity, and fairness, ensuring that the Petitioner receives the relief he rightfully deserves.

HSA
Viewpoint

The right to a refund is a legislative creation and refunds may be requested in the ways specified by law. No substantive clause expressly bars the Appellant's argument, as was previously noted. It is a well-established principle that this Court, in the exercise of its authority under Article 142 of the Constitution, must take heed of the stated provisions of the statute and proceed cautiously in using its discretion rather than disregarding and superseding them. As a result, the Court must exercise caution when interfering with a statute's prescribed limitation term in order to comply with Article 142. There is no way for a litigant to manage Satish Buba Shetty's Court delays. In accordance with the same, the Supreme Court has used its plenary authority. However, in our opinion, the Supreme Court's enunciated principle which states that a course of action that would violate equity, justice, and fairness should be followed when a party would suffer the consequences of a judicial delay or would be prejudiced for failing to comply with a requirement that it could not fulfil.

Nile Ltd v. Shri Gurdip Singh & Ors

High Court of Telangana | Civil Miscellaneous Appeal No. 354 of 2011

Background facts

- Nile Ltd (**Appellant**) received an order for the supply of Antimony Alloy Wire of certain specification (**requisite wire**) from Shri Gurdip Singh & Ors (**Respondents**) in 2004. Accordingly, the Appellant supplied 141207 Kg of the requisite wire along with the requisite pre-inspection reports and subsequently raised invoices on the Respondent No. 2 for the same.
- After repeated reminders, the Respondent No. 2 eventually responded to the reminders for payment of invoices and informed the Appellant that the requisite wire supplied by the Appellant was not found suitable for end use. Therefore, the Respondent No. 2 rejected the entire

consignment of 141207 kgs of the requisite wire and asked the Appellant to collect back the rejected material.

- The Appellant contented that the specification of the requisite wire supplied was as per the specifications mentioned in the work order issued by the Respondent No. 2. Thus, the Appellant initiated Arbitration proceedings against Respondent No. 2, contending that the rejection of the consignment was wrongful and sought realization of claim of INR 19,26,868.
- Respondent No. 2 filed a counter claim contending that the arbitration application was not maintainable as: (i) Respondent No. 2 had ordered the requisite wire for manufacturing explosive weapons for the Armed Forces and (ii) the Appellant was required to submit a test certificate from a government approved/ Certified laboratory certifying the quality of the requisite wire, which the Appellant had failed to do.
- After taking the contentions of the parties into consideration, the Sole Arbitrator (**Respondent No. 1**) issued an Award on May 12, 2006 (**Award**), granting INR 2,78,083.68 to the Appellant for the amount of requisite wire used by Respondent No. 2. However, the balance claim of Appellant was rejected since the Appellant had retrieved the material as per the terms of the supply order, absolving Respondent No. 2 of any liability for associated costs/losses including loss of interest due to quantity rejected and returned.
- Aggrieved by the Award, the Appellant filed an Arbitration Original Petition before the Additional District Judge, Rangareddy, District, (**ADJ**) however the same was dismissed vide an order dated December 23, 2010. Further aggrieved by the same, the Appellant filed the instant Civil Miscellaneous Application before the High Court of Telangana (**High Court**) challenging the order dated December 23, 2010 passed by the ADJ (**Impugned Order**).

Issue at hand?

- Does the Impugned Order, upholding the Award, deserve intervention by the High Court, and is the same liable to be set aside on the ground of patent illegality under Section 34 of the Arbitration and Conciliation Act, 1996 (**Act**)?

Decision of the Court

- The High Court observed that the requisite wire supplied by the Appellant to Respondent No. 2 was intended for the production of war materials and therefore, had to strictly meet the specific requirements set/required by Respondent No. 2, and even minor deviations from the standard of specifications could not be overlooked. The High Court further observed that a representative of the Appellant was present during the practical trial in which, the defects in the requisite wire were discovered and in accordance with which the consignment was rejected.
- Regarding the interference with the Award, the High Court maintained that the same should only occur if there exists a error apparent on the face of the record and there is perversity in the Award or if the Award showed bias. In the facts of the instant matter, the High Court observed that there was no evidence of such errors or bias and that the issues raised primarily concerned facts rather than questions of law. Accordingly, the High Court referred to the precedent set in ***NTPC Ltd v. Deconar Services Pvt Ltd***[13] and held that when two views are possible on a question of law, the Courts would not be justified in interfering with the Award.
- Furthermore, the High Court referred to the case of ***Delhi Airport Metro Express Pvt Ltd v. Delhi Metro Rail Corporation Ltd***[14], wherein the grounds for interference, namely, 'patent illegality' and 'public policy' with regards to the Arbitration and Conciliation (Amendment) Act, 2015 was discussed. In the said case, it was affirmed that while setting aside an Award on the ground of patent illegality, what is not subsumed within the fundamental policy of India law (i.e., the contravention of a statute not linked to public policy or public interest) cannot be brought in by the backdoor.
- The High Court, aside from noting the abovementioned precedents, also observed that the Respondent No. 2 had not presented any evidence to support that the Appellant had engaged in fraudulent or corrupt practices during the transaction, and neither did the Appellant demonstrate any patent illegality or irregularities committed by Respondent No. 1 in issuing the Award.
- Accordingly, the High Court held that that Respondent No.1 had appropriately passed the Award after thorough consideration and recording the reasons for the same. Therefore, the High Court opined that, given the limited scope for interference as outlined in Sections 34 and 37 of the Act, there was no justification for the High Court to intervene in the present matter and interfere with the Award.
- The High Court further held that rejection by Respondent No. 2 of the consignment was just and valid, and Respondent No.1 has correctly passed the Award after considering all the aspects of the

HSA
Viewpoint

The present judgement is in consonance with a long line of precedents, ensuring that the Courts have minimum interference with arbitration proceedings. In the instant case, the Award clearly sets out the grounds and reasons for denying the full claim of the Appellant and therefore, in our opinion, such a reasoned-out Award should not be subject to interference by the Courts. Accordingly, it is our view that the High Court has correctly dismissed the present appeal for not raising any questions of law and being devoid of patent illegality, apparent in the face of the record in the Award.

[13] 2021 SCC Online SC 498
[14] (2022) 9 SCC 286

instant case, which has been further confirmed by the ADJ. In light of the fact that the Appellant had failed to make out any of the grounds to set aside the Award, which was confirmed by the ADJ, the High Court concluded that there were no merits in the instant appeal and accordingly, dismissed the same without any costs.

UP Jal Vidyut Nigam Ltd v. CG Power and Industrial Solutions Ltd

Delhi High Court | 2023 SCC OnLine Del 7916

Background facts

- UP Jal Vidyut Nigam Ltd (**Appellant**) had notified tenders for the execution of powerhouse electrical equipment at Saharanpur district, which was awarded to CG Power and Industrial Solutions Ltd (**Respondent**) and a contract dated September 28, 1988, was executed between them. Subsequently, disputes arose between the Appellant and the Respondent, and it was referred to arbitration. On March 15, 2001, the Arbitral Tribunal pronounced an Award for INR 95,74,733 in favor of the Respondent (**Arbitral Award**).
- Aggrieved by the Arbitral Award, the Appellant filed an application challenging the Arbitral Award under Section 34 of the Arbitration and Conciliation Act, 1996 (**Section 34 Petition**) before the Civil Judge, Saharanpur on July 2, 2001, that is, after a lapse of 110 days from the Arbitral Award. The Section 34 Petition faced procedural challenges, including transfers between different Courts and dismissals on 2 occasions. Resultantly, the Respondent filed an execution petition before the District Judge, Saharanpur for execution of the Arbitral Award. In the meantime, an application for the stay on execution was filed by the Appellant before the District Judge, Saharanpur, and the same was rejected vide an order dated January 6, 2018 (**Order**).
- With a view to challenge the Order, the Appellant filed a petition (**Restoration Application**) under Article 227 of the Constitution of India before the Allahabad High Court (**Allahabad HC**), in order to restore the application filed for the stay of execution proceedings. By an order dated February 19, 2018, the Allahabad HC allowed the Restoration Application and directed the Appellant and Respondent to refrain from seeking adjournment till the Restoration Application was adjudicated upon. In the meantime, the proceedings filed by the Respondent before the District Judge, Saharanpur for execution of the Arbitral Award was to also remain in abeyance.
- On March 14, 2018, a Trial Court in Allahabad allowed the Restoration Application filed by the Appellant, thereby reviving the Section 34 Petition. Subsequently, the Appellant filed an application before the District Judge, Saharanpur for the withdrawal of the Section 34 Petition with liberty to file the same before a Court of competent jurisdiction. This was allowed vide order dated May 3, 2018.
- Subsequently, the Appellant filed Section 34 Petition before the District Judge, Patiala House Court, New Delhi (**Patiala House Court**) on May 8, 2018, which petition was returned by the Patiala House Court to be filed before a single-judge bench of the Delhi High Court (Delhi HC), in view of the fact that the Patiala House Court lacked pecuniary jurisdiction to entertain the Section 34 Petition. Consequently, the Appellant proceeded to file the Section 34 Petition before a single judge bench of the Delhi HC on August 25, 2018. Hence, the Section 34 Petition was filed before the Delhi HC after more than 17 years from the date of the Arbitral Award. This Section 34 Petition was accompanied by an application under Section 14 of the Limitation Act seeking condonation of delay of 6,263 days which had been spent in the proceedings before the Courts at Saharanpur. The single judge of the Delhi HC, vide its order dated April 12, 2019 (**Impugned Order**) dismissed the Appellant's application filed under Section 14 of the Limitation Act, 1963 and the Section 34 Petition.
- Aggrieved by the Impugned Order, the Appellant filed the present appeal under Section 37 of the Arbitration and Conciliation Act, 1996 before the Division Bench of Delhi HC to set aside the Impugned Order.

Issue at hand?

- Whether for the purposes of calculating limitation under Section 34(3) of the Arbitration Act, the delay of 6,263 days can be excluded and condoned under Section 14 of the Limitation Act, 1963?

Decision of the Court

- At the outset, the Delhi HC analyzed Section 14 of the Limitation Act, 1963 and observed that the said Section had been enacted to exempt a period covered by litigious activity and to protect a litigant against the bar of limitation, where a proceeding is dismissed on account of a technical defect instead of being decided on merits. Therefore, the intent of the legislature is to prevent a

litigant from being saddled with an adverse decision, which is, on account of the fact that a Court did not have the jurisdiction to entertain the case.

- The Delhi HC observed that, in the ***Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department***[15], the SC, while elaborating on the principles laid down in the ***Madhavrao Narayanrao v. Ramkrishnagovind Bhanu***[16], had detailed the pre-conditions which must co-exist and ought to be satisfied for application of the benefit under Section 14 of the Limitation Act, 1963, which are as follows:
  - Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party
  - The prior proceeding had been prosecuted with due diligence and in good faith
  - The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature
  - The earlier proceeding and the latter proceeding must relate to the same matter in issue
  - Both the proceedings are in a Court
- The Delhi HC noted that Section 2(h) of the Limitation Act, 1963 defines the term 'good faith' as 'nothing shall be deemed to be done in good faith which is not done with due care and attention'. The Delhi HC further observed that the SC, while discussing the term 'due care and attention' in the context of Section 14 of the Limitation Act, 1963, in the Madhavrao Narayanrao case, held that what ought to be considered is whether a plaintiff had brought on record any evidence to show that he was prosecuting the previously instituted suit with due diligence. The measure of due diligence and prosecuting in good faith would have to be decided based on the facts of each case.
- The Delhi HC highlighted that sequence of the events in the present case demonstrated a complete absence of due diligence on the part of the Appellant. The Appellant had not provided an explanation for either the transfers or pendency of the Section 34 Petition or for the dismissals thereof. Moreover, the Appellant had also failed to provide an explanation as to why the Section 34 Petition was filed before the Patiala House Court which lacked jurisdiction to entertain such a petition.
- Further, the Appellant was completely devoid of any reasons as to why the Section 34 Petition was pending adjudication in the Courts at Saharanpur for more than 15 years. The Delhi HC observed that the conduct of the Appellant clearly established that the prior proceedings were not being prosecuted diligently or in good faith. Further, the 5 pre-conditions (as mentioned above) for allowing the application under Section 14 of the Limitation Act, 1963 did not co-exist.
- In view of the above, the Delhi HC found no reason to interfere with the Impugned Order and dismissed the appeal filed by the Appellant.

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Viewpoint

Through this judgement, the Delhi HC has emphasized that due diligence and good faith are essential pre-requisites for invoking the benefit under Section 14 of the Limitation Act, 1963, which exempts a period covered by litigious activity and protects a litigant against the bar of limitation when a proceeding is dismissed on account of a technical defect instead of being decided on merits. his judgment clarifies that an application under Section 14 of the Limitation Act, 1963 would not be available to a Petitioner who, through its lack of diligence, allowed its petition to be dismissed twice for non-prosecution. This ruling brings forth crucial insights into the application of Section 14 of the Limitation Act, 1963 in the context of Arbitration proceedings. In our opinion, this ruling reinforces the principle that the protection afforded by Section 14 of Limitation Act, 1963 demands a high standard of diligence from the Petitioner and parties navigating arbitration proceedings should take heed of this decision, ensuring meticulous adherence to procedural requirements and jurisdictional considerations.

[15] (2008) 7 SCC 169
[16] 1959 SCR 564

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