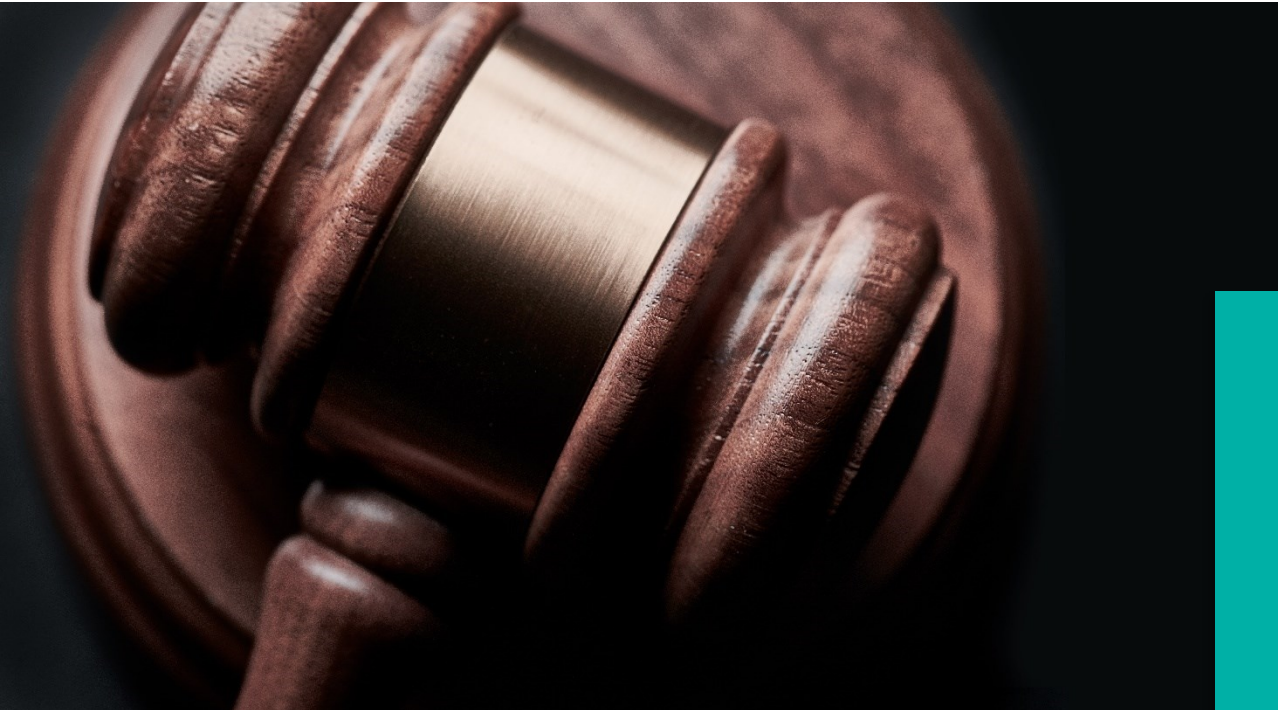


Dispute Resolution & Arbitration

Monthly Update
January 2025

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DISPUTE RESOLUTION AND ARBITRATION UPDATE



Dushyant Janbandhu vs. Hyundai Autoever India Pvt. Ltd.

2024 INSC 966

Background facts

- In 2019, the Appellant was appointed as Assistant Manager by the Respondent. Amid the COVID-19 pandemic, the Appellant worked from home from March 22, 2020, to January 6, 2021. Despite the Respondent's directive to resume physical attendance from August 2020, the Appellant's refusal led to disciplinary proceedings, including the issuance of a show-cause notice, an inquiry, and a charge memo. The Appellant's employment was ultimately terminated on January 6, 2021.
- During the pendency of disciplinary action, the Appellant was not paid his salary, prompting him to file a claim under *Section 15(2)* of the *Payment of Wages Act, 1936* ("PW Act"). The Respondent countered by issuing an arbitration notice and unilaterally appointing an arbitrator. Additionally, the Respondent filed an application before the Authority under the *PW Act*, seeking reference of the dispute to arbitration. However, the Authority dismissed the application, holding that under *Section 23* of the *PW Act*, an arbitration agreement cannot impede the statutory claim for illegally deducted wages.
- Subsequently, the Respondent approached the Madras High Court under *Section 11(6)* of the *Arbitration and Conciliation Act, 1996* ("A&C Act"), seeking the appointment of an arbitrator. The High Court, noting the existence of an arbitration agreement, appointed an advocate as the arbitrator. Aggrieved by this decision, the Appellant filed a Special Leave Petition ("SLP") before the Hon'ble Supreme Court.

Issue(s) at hand

- Are disputes concerning non-payment of wages and the legality of termination arbitrable?
- Was the Respondent's invocation of arbitration an abuse of legal process?

Findings of the Court

- The Supreme Court held that disputes related to non-payment of wages and termination legality are non-arbitrable, falling exclusively within the jurisdiction of statutory authorities under the PW

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Act and the *Industrial Disputes Act, 1947* ("ID Act"). The Court referred to the *fourfold test* of arbitrability established in *Vidya Drolia v. Durga Trading Corporation* (2021) 2 SCC 1.

- The Court criticized the Respondent's conduct as a deliberate misuse of the arbitration process, aimed at bypassing statutory frameworks and exerting undue pressure on the Appellant. It observed that invoking arbitration for disputes already pending before statutory authorities under the *PW Act* and *ID Act* violated the statutory scheme, undermining the exclusive jurisdiction of these authorities. This attempt was deemed a tactic to deter the Appellant from exercising lawful remedies, warranting the imposition of costs on the Respondent.
- Consequently, the Court found the *Section 11(6)* petition to be an abuse of process aimed at intimidating the Appellant for seeking statutory remedies. It set aside the High Court's order appointing an arbitrator and imposed a cost of ₹5 Lakhs on the Respondent.

HSA

Viewpoint

This judgment reinforces the principle that disputes falling exclusively within the jurisdiction of statutory authorities are non-arbitrable, safeguarding the primacy of statutory remedies under the *Payment of Wages Act, 1936* and the *Industrial Disputes Act, 1947*. By applying the fourfold arbitrability test established in *Vidya Drolia v. Durga Trading Corporation*, the Supreme Court delineated the boundaries of arbitration and upheld the sanctity of statutory dispute resolution frameworks.

The Court also sternly addressed the Respondent's misuse of the arbitration process as a tactic to intimidate the Appellant and bypass statutory authorities. It clarified that such conduct undermines the statutory scheme and violates the exclusive jurisdiction of these authorities, thus warranting the imposition of costs. This decision is a critical reaffirmation of employee rights and a deterrent against the abuse of legal processes by employers. The Supreme Court's approach judiciously balances the rights of individuals with the overarching statutory framework, ensuring justice and fairness.

Rajendra Kumar Barjatya and another Vs. U.P. Avas Evam Vikas Parishad & Ors.

2024 SCC OnLine SC 3767

Introduction

- The Supreme Court's judgment in the case of **Rajendra Kumar Barjatya & Anr. v. U.P. Avas Evam Vikas Parishad & Ors.** establishes a strict stance against illegal constructions. Unauthorized constructions cannot be legitimized solely due to administrative delays, the passage of time, or monetary investments. A series of directions were issued to curb illegal constructions. The case involved unauthorized commercial constructions on a residential plot in Meerut, Uttar Pradesh, in blatant violation of urban planning regulations. A bench comprising Justices J.B. Pardiwala and R. Mahadevan upheld the Allahabad High Court's order to demolish the illegal structures and issued directions to curb unauthorized constructions.

Background facts

- The case of **Rajendra Kumar Barjatya and Another vs. U.P. Avas Evam Vikas Parishad & Ors.** revolves around the issue of unauthorized construction of commercial spaces on land allotted by the **U.P. Housing and Development Board** in urban areas, highlighting the conflict between individual rights and public welfare.
- The appellants had constructed commercial shops and spaces **without adhering to approved building plans and statutory requirements** under urban development laws. Despite prolonged occupancy and significant financial investments, these constructions were deemed illegal.
- Public officials were found to have either colluded or been negligent in granting wrongful permissions, such as completion and occupation certificates, which emboldened the appellants. The matter raised critical questions about the accountability of officials, the legal consequences of unauthorized constructions, and the balancing of hardships faced by individuals with the need to uphold the rule of law and urban planning integrity.
- The Allahabad High Court ordered the demolition of the illegal structures, which was challenged by the appellants based on long-standing occupancy and alleged lapses by authorities. This case ultimately led the Supreme Court to establish stringent directives to combat illegal constructions and ensure strict compliance with urban development norms.

Issue(s) at hand?

- Whether unauthorized constructions, despite prolonged occupancy and financial investment, can be regularized?
- Whether administrative inaction or negligence by authorities can be used as a defense for illegal constructions?
- What measures can be taken to ensure accountability of public officials involved in granting wrongful permissions?

Findings of the Court

- Supreme Court's Observations on Illegal Constructions
 - Strict Adherence to Laws:
The Supreme Court emphasized that illegal constructions, irrespective of their age, the extent of investments involved, or occupancy status, cannot be regularized under any circumstances. The Court underscored the necessity of adopting a zero-tolerance approach to uphold urban planning laws and ensure disciplined urban development. It noted that allowing any leniency in enforcing such laws would lead to chaos in urban governance and incentivize disorderly development. Courts, as the custodians of justice, are duty-bound to curb illegal constructions "with iron hands" to establish a strong deterrence against future violations.
 - No Legalization by Passage of Time:
The Court reiterated the principle of law encapsulated in the legal doctrine **Ex turpi causa non oritur actio**, which means no legal right arises from a wrongful act. In this context, it held that mere delay by authorities in initiating action against illegal constructions does not grant any legal sanctity to such violations. Unauthorized structures, irrespective of the time that has passed since their construction, must be demolished to prevent a culture of impunity, uphold the rule of law, and maintain urban order.

- Accountability of Officials:

The Supreme Court also brought to light the accountability of officials who enable illegal constructions through the issuance of wrongful permissions, completion certificates, or occupation certificates. The Court directed that such officials must face stringent departmental proceedings to ensure that such malpractices are not repeated. It observed that allowing regularization of unauthorized constructions would create a perilous precedent, emboldening violators and encouraging more widespread disregard for planning laws.

Directions Issued by the Supreme Court

- For Builders and Developers

- Builders and developers must provide **undertakings** ensuring that possession of constructed units is handed over to buyers only after obtaining valid **completion/occupation certificates** in accordance with approved plans.
- Approved building plans must be prominently **displayed at construction sites** throughout the construction period to promote transparency and adherence to regulations.
- Any **deviations from approved plans** detected during or after construction must be rectified before completion/occupation certificates are issued to prevent unauthorized modifications.

- For Authorities

- Authorities are mandated to conduct **periodic inspections of construction sites** during the building process and maintain detailed records of such inspections to monitor compliance with approved plans.
- Utilities such as **electricity, water, and sewage connections** must be provided only after completion/occupation certificates are produced, ensuring that structures meet all regulatory standards.
- Authorities must take **immediate corrective actions** against detected deviations, including those identified after the issuance of completion certificates, to maintain the sanctity of urban planning laws.
- Departmental proceedings must be promptly initiated against officials found responsible for issuing wrongful permissions, completion certificates, or occupation certificates, thereby upholding accountability and deterring future malpractices.

This detailed framework highlights the Supreme Court's commitment to preserving the rule of law, promoting orderly urban development, and curbing the menace of unauthorized constructions through a strict and uncompromising approach.

HSA Viewpoint

This judgment is a strong affirmation of the rule of law in urban governance. It sets a high benchmark for dealing with unauthorized constructions and ensures accountabilities for all stakeholders involved. However, effective implementation and consideration of innocent third-party interests remain critical to achieving the intended outcomes. Balancing strict enforcement with social equity will determine the long-term impact of this decision on urban development in India.

The Supreme Court's judgment reinforces the sanctity of urban development laws, emphasizing strict compliance and accountability. Illegal constructions, irrespective of delay, financial investment, or occupancy, must be dealt with decisively. By holding both violators and officials accountable, the judgment aims to ensure orderly urban development, public safety, and adherence to statutory frameworks.

The ruling further mandates that even after the issuance of a completion or occupancy certificate, any deviation or violation contrary to the approved planning permission must be immediately addressed by the concerned authorities. Builders, owners, or occupants responsible for such infractions will face legal action, while officials issuing wrongful certifications will be subjected to departmental proceedings.

Moreover, the judgment highlights the necessity for urban development to strictly conform to zonal plans and designated land usage. Any modification to these plans must align with established rules, consider the larger public interest, and evaluate the environmental impact. Violations of these directives will attract contempt proceedings in addition to prosecution under the applicable laws.

This landmark decision not only reinforces transparency, governance, and fairness in urban planning processes but also ensures that urban development laws serve their intended purpose. However, its long-term success will hinge on effective implementation and a balanced approach that addresses social equity while enforcing strict compliance. This judgment stands as a stern warning to violators and negligent officials alike, fostering accountability and safeguarding the integrity of urban development in India.

Tarun Dhameja Vs. Sunil Dhameja & Anr.

Civil Appeal No.14005 of 2024

Background facts

- Late Mr. Yeshwant Boolani was a partner in M/s Dhameja Home Industries, a partnership firm. Following his death on September 18, 2023, his legal heir, Tarun Dhameja ("**Appellant**"), sought induction as a partner in the firm and claimed his inheritance of the partnership share.
- The Appellant issued notices to Mr. Sunil Dhameja and Mr. Pitamberdas Oolani, other partners in the firm ("**Respondents**") on December 1, 2023, and January 10, 2024, invoking the arbitration clause in the partnership deed under Clause 23, seeking the resolution of disputes regarding his induction and inheritance rights.
- The Respondents opposed the induction, citing Clause 21 of the partnership deed, which grants discretion to the surviving partners to induct or refuse legal heirs of a deceased partner. They also argued that the arbitration clause was optional and could not be unilaterally invoked by the Appellant. Pursuant to the dispute, the Appellant filed an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 before the Madhya Pradesh High Court.
- Vide Order dated May 31, 2024, the Madhya Pradesh High Court held that while the arbitration clause could theoretically allow disputes involving legal heirs, its optional nature, coupled with the non-consensus among the parties, rendered the clause inapplicable in this case. Thus, the High Court dismissed the application but allowed the Appellant to pursue other legal remedies.
- Being aggrieved by the said Order, the Appellant filed the present appeal before the Hon'ble Supreme Court of India ("**SC**").

Issue(s) at hand?

- Whether the arbitration clause in the partnership deed allows the legal heir to unilaterally invoke arbitration despite the requirement for mutual consent in appointing the arbitrator?

Findings of the Court

- At the outset, the SC perused the arbitration clause in the partnership deed and observed that while the phrase "arbitration shall be optional" might suggest flexibility, the clause, when read in entirety, confirms that disputes involving legal representatives of deceased partners can be referred to arbitration.
- The SC referred to *Vidya Drolia v. Durga Trading Corporation*¹, *Oriental Insurance Co. Ltd. v. Narbheram Power & Steel (P) Ltd.*², and *Fili Shipping Co. Ltd. v. Premium Nafta Products Ltd*³, which advocate for a liberal and pro-arbitration interpretation of such clauses. The SC emphasized that arbitration clauses are designed to ensure efficient and neutral dispute resolution mechanisms, avoiding the delays and complexities of litigation.
- The SC held that the arbitration clause in the partnership deed, when read holistically, enables legal representatives or anyone claiming through a partner to invoke arbitration for dispute resolution. The initial portion of the clause clearly permits arbitration for disputes arising between partners or their legal heirs. The phrase "arbitration shall be optional" does not negate the enforceability of the clause but indicates the aggrieved party's discretion to invoke arbitration. Mutual consent is required only for appointing an arbitrator.
- The SC held that legal representatives of deceased partners are entitled to invoke the arbitration clause under the terms of the partnership deed and the Arbitration and Conciliation Act, 1996. The SC further held that if the parties fail to agree on the appointment of an arbitrator, the court has the authority to appoint one under Section 11(6) of the Arbitration and Conciliation Act, 1996.
- In view of the above, the SC overturned the Order passed by the Madhya Pradesh High Court and directed the Madhya Pradesh High Court to appoint a Sole Arbitrator to adjudicate the disputes inter-se the parties and disposed this petition.

HSA Viewpoint

This decision of Supreme Court is a commendable step in reinforcing arbitration as an effective dispute resolution mechanism. The Court's interpretation of the arbitration clause strikes a fine balance between the intent of the parties and the broader legislative objective of promoting arbitration. By interpreting the "optional" nature of the clause as granting discretion to invoke arbitration while requiring mutual consent only for appointing the arbitrator, the Court has preserved the clause's operational intent. This ruling not only safeguards the rights of legal heirs to invoke arbitration but also sets a precedent that enhances the credibility of arbitration as a preferred mechanism for resolving commercial disputes.

1(2021) 2 SCC 1
2(2018) 6 SCC 534
32007 UKHL 40

Before the Hon'ble Supreme Court of India

Rohit Kochhar (Petitioner) Vs. Vipul Infrastructure Developers Ltd. & Ors. (Respondents)

Special Leave Petition (Civil) Nos. 10169-10171 of 2008

Background facts

- The present matter pertains to a dispute arising out of a contract pertaining to a commercial property. In September 2003, Vipul Infrastructure Developers Ltd. ("**Respondent**") offered to sell a commercial space in the Gurgaon complex admeasuring approximately 10,000 sq. ft., which was being developed by the respondents. Thereafter, one Mr. Rohit Kochhar ("**Petitioner**") accepted the offer via a letter dated 20 January 2004 and issued a cheque of INR 20,00,000, with an additional payment of INR 20,00,000 made on 6 February 2004. Soon after the Petitioner made the payments, disputes arose between the parties, pertaining to 'Flat Buyers Agreement' entered into between the parties.
- The Petitioner asserts that the Respondents imposed unreasonable and arbitrary terms in the "Flat Buyers Agreement" to evade their contractual obligations and despite numerous attempts by the Petitioner to negotiate, the Respondents had failed to honour the contract.
- Aggrieved by the Respondent's alleged refusal to honour the binding contract despite the expression of willingness and readiness by the Petitioner on multiple occasions, the Petitioner was constrained to institute a civil suit for specific performance and permanent injunction before the Hon'ble Delhi High Court.
- The Respondents, vide their written statements, asserted that no 'concluded contract' existed between the parties and the letters exchanged were merely part of ongoing negotiations and not binding. Furthermore, the Respondents submitted that the Petitioner failed to show his readiness and willingness to pay the balance amount at any point in time and thus cannot seek specific performance of the contract. Additionally, the Respondents also challenged the territorial jurisdiction of the Hon'ble Delhi High Court to entertain the suit, as the property was located in Gurugram.
- The Ld. Single Judge of the Hon'ble Delhi High Court ("**Ld. Single Judge**") ruled in favour of the Petitioner, holding that the court had jurisdiction based on the proviso to Section 16 of the Code of Civil Procedure, 1908, ("**CPC**") as the relief sought could be enforced through personal obedience. However, a Division Bench of the Hon'ble Delhi High Court ("**Division Bench**") reversed the Ld. Single Judge's order, holding that the execution and registration of the sale deed required actions in Gurugram, thus depriving the Hon'ble Delhi High Court of its jurisdiction. The Petitioner's plaint was therefore returned for presentation before the appropriate court.
- Aggrieved by the aforesaid decision of the Division Bench, the Petitioner approached the Hon'ble Supreme Court ("**Hon'ble Court**") via Special Leave Petition, thereby challenging the Division Bench's decision. The Petitioner argued that Hon'ble Delhi High Court had territorial jurisdiction, as the proviso to Section 16 of the CPC permits suits to be filed where the defendant resides or carries on business, provided the relief sought can be obtained through the defendant's personal obedience. The Petitioner therefore claimed that as the Respondent's carried on their business in Delhi, and the relief sought by the Petitioner could be obtained through the Respondent's personal obedience, the proviso to Section 16 of CPC would be applicable.

Issue(s) at hand?

The following issues were put before the Hon'ble Court:

- Whether the Hon'ble Delhi High Court had territorial jurisdiction to entertain the suit, considering the suit property was located in Gurugram?
- Whether in a suit for specific performance, a separate relief for possession of property is always required?

Findings of the Court

- The Hon'ble Court dismissed the petition, upholding the Division Bench's decision. The Hon'ble Court clarified that under Section 16 of the CPC, suits related to immovable property must ordinarily be filed where the property is located and while the proviso allows exceptions if the relief can be entirely enforced through the personal obedience of the defendant, this was not applicable in the present case as the registration of the sale deed—a necessary step for completing the transfer—would have to occur in Gurugram, where the property is located. The execution of such a decree inherently involves actions outside the territorial jurisdiction of the Hon'ble Delhi High Court.

- Furthermore, on the question of whether a separate relief for possession is always required in a suit of specific performance the Hon'ble Court analysed the interplay between Sections 22 and 28 of the Specific Relief Act, 1963, and Section 55 of the Transfer of Property Act, 1882. The Hon'ble Court made reference to the case of *Babu Lal v. Hazari Lal Kishori Lal and Others*¹ wherein it was held that in a case where exclusive possession is with the contracting party, a decree for specific performance of the contract of sale simpliciter, without specifically providing for delivery of possession, may give complete relief to the decree-holder.
- Thereafter, the Hon'ble Court examined the agreement between the parties and noted that said agreement stipulated the handing over of possession of the suit property to the Petitioner, upon payments of a certain percentage of the total consideration payable, which is similar to the provision of Section 55 of the Transfer of Property Act, which provides for the handover of the possession of the property to the buyer pursuant to the execution of the sale deed.
- Accordingly, after examining the facts of the instant case, and taking into consideration the past precedents, the Hon'ble Court opined that where the transfer of possession is implicit in the agreement, a specific claim for possession may not always be necessary. However, the relief sought still ties the case to the property's location, rendering the Hon'ble Delhi High Court's jurisdiction untenable.

HSA Viewpoint

In our opinion, the present decision of the Hon'ble Supreme Court is a critical reaffirmation of the principles of territorial jurisdiction governing property-related disputes. Further, by emphasizing that exceptions to Section 16 of the CPC must be narrowly applied, the instant decision of the Hon'ble Supreme Court has rightly protected against any jurisdictional overreach. Furthermore, the Hon'ble Court has rightly clarified that when the transfer of possession of a property is implicit in the contract for its transfer, absence of a specific prayer seeking transfer of possession would not have any bearing in a suit for specific performance of the contract.

¹ (1982) 3 SCR 94

In The High Court of Delhi at New Delhi

N. J. Garments Private Limited (Petitioner) Vs. Capitalgram Marketing and Technology Pvt. Ltd. (Respondent) (Respondents)

Arbitration Petition No. 642 of 2024

Background facts

- M/S N. J. Garments Private Limited ("Petitioner") and M/S Capitalgram Marketing and Technology Pvt. Ltd. ("Respondent") entered into a Lease Deed dated July 30th, 2021 ("Lease Deed"), whereby certain premises were leased by the Petitioner to the Respondent.
- Article 16 of said Lease Deed provided for an arbitration clause for resolving any dispute that arose between the parties under the Lease Deed. Article 16 of the Lease Deed stated that in case of any dispute arising between the parties, the same shall be resolved through friendly consultation in the first instance and if the dispute were not resolved through the friendly discussion then the parties may refer the dispute for resolution by an Arbitrator.
- Dispute arose between the parties. In view of the same the Petitioner sent various emails to the Respondent raising monetary claims. However, when the dispute with respect to the monetary claims remained unresolved the Petitioner sent a notice dated March 31st, 2024, invoking arbitration for resolving the dispute.
- In response to the notice dated March 31st 2024, the Respondent sent a reply dated April 29th 2024, whereby they denied the monetary claim and also stated that the attempt of the Petitioner to invoke arbitration was premature as the Petitioner had not attempted to resolve the dispute through friendly discussion before invoking arbitration.
- In view of the above circumstance, the Petitioner filed the present Petition.

Issue(s) at hand?

- Whether the appointment of the Ld. Arbitrator was premature?

Findings of the Court

- At the outset, the Hon'ble court placed reliance on the judgment in the cases of *Visa International Ltd v. Continental Resources USA Ltd*¹ and *Demerara Distilleries Pvt Ltd v. Demerara Distillers Ltd*², wherein it was emphasized that arbitration clauses mandating pre-arbitration negotiations must be interpreted pragmatically. The court in the above-mentioned cases have noted that pre-conditions such as "friendly consultations" must be interpreted realistically.
- The Hon'ble Court further held that when parties have already disputed a claim and a notice under Section 21 of the Arbitration and Conciliation Act, 1996 ("Act") is either ignored or denied, then forcing them into "friendly negotiations" is unnecessary. Such negotiations would be futile as the parties' positions are clearly opposed.
- In view of the above referred judgements, the Hon'ble Court held that the instant petition is not premature on the account that the Petitioner did not formally attempt "friendly negotiations" before invoking arbitration.
- The Hon'ble court further referred to judgment in the case of *SBI General Insurance Co. Ltd. v. Krish Spinning*.³, which established that the role of a Section 21 court is limited to determining the existence of a valid arbitration agreement and verifying whether the Section 11(6) petition has been filed within three years from the date of issuance of the Section 21 notice.
- The Hon'ble Court finally held that there exists a valid arbitration agreement between the parties in the instant case and the instant petition is filed within the limitation period. Hence, the Court appointed Ms. Neeru Vaid to arbitrate the dispute and accordingly disposed of the petition.

HSA Viewpoint

This judgment demonstrates the judiciary's pragmatic approach in interpreting arbitration clauses. While adhering to procedural requirements, it is important that the courts rightly prioritize substantive justice over procedural rigidity. By relying on well-established precedents, this decision underscores the principle that arbitration, as a mechanism for dispute resolution, should not be delayed or obstructed unnecessarily. This judgment strikes a balance between respecting contractual terms and ensuring access to justice, making it a noteworthy example of judicial intervention in arbitration disputes.

¹ (2009) 2 SCC 55

² (2015) 13 SCC 610

³ 2024 SCCOnline SC 1754

In The High Court of Delhi

Suresh Shah (Petitioner) Vs. Tata Consultancy Services Limited (Respondent)

2024 SCC OnLine Del 8552

Background facts

- A contract was entered into between Suresh Shah, a non-resident Indian living in Nairobi, Kenya, and Tata Consultancy Services Limited ("TCS"). A dispute arose from this contract, leading to arbitration proceedings. As a result, two arbitral awards were passed dated December 16, 2016, and January 14, 2017.
- Both parties challenged these awards under Section 34 of the Arbitration and Conciliation Act, 1996 ("the Act") which permits a party to apply for setting aside an award on grounds such as contravention of public policy, procedural irregularities, or manifest illegality.
- The nationality and residency of Mr. Suresh Shah became a key issue in determining whether the arbitration qualified as an International Commercial Arbitration (ICA) under Section 2(1)(f) of the Act, which stipulates that arbitration qualifies as an ICA if at least one party is a national or habitual resident of a country other than India.
- A preliminary objection was raised on this basis, as this classification was crucial in determining the scope of judicial review under Section 34, as International Commercial Award cannot be set aside on the ground of patent illegality as the scope of interference is limited after the introduction of section 34 (2A) of the Arbitration Amendment Act, 2015.

Issue(s) at hand?

- Whether the arbitration proceedings qualified as an International Commercial Arbitration under Section 2(1)(f) of the Arbitration and Conciliation Act, 1996?
- Whether Section 2(1)(f) of the Act is non-derogable, and if its applicability can be excluded by the mutual consent of the parties?

Findings of the Court

- The High Court of Delhi relied on the decision of Madhya Pradesh High Court in the case of *Sasan Power Ltd v North American Coal Corp India Pvt Ltd*¹. to reiterate that the classification of International Commercial Arbitration is based on the nationality of the parties. It also observed that it affects the procedure for the appointment of the arbitrator under Section 11 of the Act, the law governing the arbitration when the seat is in India under Section 28 of the Act, and the scope of challenge to an award under Section 34 of the Act.
- It clarified that since the respondent is a national and resident of Kenya, thereby bringing these proceedings under the ambit of International Commercial Arbitration.
- In determining whether the definition of International Commercial Arbitration under Section 2(1)(f) of the act, is derogable, the Delhi High Court held that Section 2(1)(f), being a definition provision, is non-derogable as it is meant to provide a structure for an effective and consistent application to the Arbitration law in India and no amount of "Party Autonomy" can be permitted to fiddle with the foundations of Arbitration law.
- Classically, the term "derogable" means provisions from which it is possible to detract or annul. However, In the context of the Arbitration Act, it implies that the parties have the freedom to derogate from certain provisions of law due to party autonomy, while other mandatory provisions cannot be modified by mutual consent.
- The Court relied its decision on the principles set forth in the Central Organisation for *Railway Electrification vs. M/s ECI SPIC SMO MCML (JV) A Joint Venture Company*², where it was established that Section 2(2) of the Act is non-derogable as it forms part of the definition clause outlining the scope of application of Part I.
- Thus, it is clear that the parties cannot derogate from the definition of ICA under Section 2(1)(f), ensuring a consistent and mandatory framework for arbitration proceedings in India.

HSA Viewpoint

This decision reinforced the non-derogable nature of the definition provisions under Section 2(1)(f) of the Arbitration and Conciliation Act, 1996, emphasizing that its applicability cannot be excluded even by mutual consent of parties. The court has acknowledged the principle of party autonomy in arbitration but also clarified that certain foundational aspects of the Act are mandatory and cannot be modified. This decision upholds the statutory framework and ensures consistency in the application of arbitration law in India.

¹ (2016)10 SCC 813

² 2024 SCOnline SC 3654

In The Supreme Court of India

Krishna Devi @ Sabitri Devi (Rani) M/s S.R. Engineering Construction (Appellant) Vs. Union of India and Ors. (Respondents)

Civil Appeal No. 47 of 2025

Background facts

- Sabitri Devi's ("Appellant") husband, the sole proprietor of the firm M/s S.R. Engineering Construction ("firm"), had secured a work order for constructing a permanent 'armament section' at Tezpur from the Respondents.
- The work order was governed by the general conditions of contract entered into between the firm and the Respondent. The condition of contract had an arbitration clause for resolving disputes arising out of the work order etc.
- The firm completed the work as per the work order and thereafter raised a bill in respect of the same. However, since the Respondent did not clear the dues of the firm, the Appellant's husband requested the Respondents to resolve the disputes through arbitration.
- The Respondents rejected the request of the Appellant's husband, thereby compelling him to file an Application before the Hon'ble Delhi High Court for appointment of an Arbitrator. The said Application before the Hon'ble Delhi High Court was rejected due to lack of jurisdiction.
- The Application finally filed an Application before the District Judge, Sonitpur for appointment of an Arbitrator which was allowed on August 26th 2019 and an Arbitrator was appointed.
- During the pendency of the arbitration, the Appellant's husband expired and the Appellant was made a party to the said proceeding as a legal heir.
- The Arbitrator passed an award on May 31st 2022, whereby he directed the Respondents to pay a sum of Rs 1,33,47,268.92/- to the Appellant along with an interest of 9% on the said amount till the realization of the same.
- Though the arbitration proceedings culminated in an award, it could not be published as the Respondents had not cleared their dues towards the Arbitrator's fees. Hence, the Appellant was compelled to file an Application under Section 38 of the Arbitration Act, 1940 ("Act") before the District Judge, Sonitpur.
- The District Judge, Sonitpur passed an order dated September 21st 2022 directing the Respondents to clear the dues of Rs 47,212.33/- towards the Arbitrator's fees. The said order further recorded a copy of the arbitral award shall be furnished upon both the parties the dues of the Arbitrator has been cleared.
- The Appellant received a copy of the arbitral award on September 22nd 2022. However, the Respondents only paid the dues towards Arbitrator's fees on November 18th 2022 after which it received the notice of filing the award on the even date.
- The Appellant filed an Application under Section 17 of the Act before the District Judge, Sonitpur seeking pronouncement of the judgement according to the arbitral award.
- The said Application was dismissed by the District Judge, Sonitpur holding that the Application was premature as it was filed before the limitation for filing objections to the arbitral award could expire. As per the court the limitation for filing objection began only on November 18th 2022 when a formal notice of award was received by the Respondents.
- The Appellant filed a Civil Revision Petition before the Hon'ble Delhi High Court challenging the order passed by the District Judge, Sonitpur. The Hon'ble Delhi High Court dismissed the Civil Revision Petition and upheld the decision of the District Judge, Sonitpur.
- Being aggrieved by the order of the Hon'ble Delhi High Court the Appellant filed the present Appeal.

Issue(s) at hand?

- Whether the Application filed by the Appellant under Section 17 of the Act was premature?

Findings of the Court

- At the outset the Hon'ble Court held that the Respondents had notice of filing of the arbitral award due to order dated August 21st 2022 wherein the District Court, Sonitpur has directed the Respondents to pay their dues towards the Arbitrator's fees. The said order also stipulated that a copy of the order shall be given once the Arbitrator's fees were paid. Basis the same the Hon'ble Court held that the Respondents were fully aware that once the Arbitrator's fees have been paid the Court would notify the filing of the arbitral award.

- The Hon'ble Court further held that as per Article 119(b) of the First Schedule of the Limitation Act, 1963 ("Limitation Act"), the date for filing objections to the award is 30 days and it commences from the date of service of notice regarding the filing of award. The Court also held that Section 14(2) of the Act also requires that a Court of relevant jurisdiction gives notice to the parties when an award is passed.
- Additionally, the Hon'ble Court held Section 14(2) of the Act requires that the parties are made aware that an award is in existence so that any objection to the same may be filed. The Court also held that the usage of the word 'notice' in Section 14(2) of the Act basically means that parties merely reach a state of awareness about the award.
- The Hon'ble Court relied on the judgment in the case *Nilkantha Sidramappa Ingushetia vs Kashinath Samanna Nonghetto*¹, wherein it was held that term 'notice' in Section 14(2) of the Act nowhere excludes its informal expression. The Hon'ble Court also relied on the judgement in the case of *Ramalinga Reddy vs Superintending Engineer*² and *Food Corporation of India vs E. Ketapang*³, wherein it was held that communication of filing of award to the party's pleader is a valid compliance with the text of Section 14(2) of the Act.
- The Hon'ble Court also relied on the judgement in the case of *Indian Rayon Corporation Ltd. vs Raunaq and Co. Pvt. Ltd.*⁴ and *Bharat Coking Coal Ltd. vs C.K. Ahuja*⁵, wherein it was clarified that the objective of Section 14(2) is that the parties are aware of the award's existence and is a substantive compliance and not a procedural stipulation.
- In view of the said judgements, the Court held that the District Court and the High Court erred in noting that the limitation for filing objection was still running when the Appellant filed an Application under Section 17 of the Act as the Respondents were sufficiently aware of the arbitral award on September 21st 2022.
- In view of the same, the Hon'ble Court allowed the appeal and set aside the order dated March 27th 2024 passed by the High Court and directed the District Court, Sonitpur to dispose of the Misc. (J) 61 of 2022 as expeditiously as possible.

HSA Viewpoint

The judgment rendered by the Court appropriately emphasizes the principle that procedural technicalities should not frustrate the objectives of the Act, which is aimed at expeditious resolution of disputes. The Court has rightly interpreted the provisions of Section 14(2) of the Act and Article 119(b) of the Limitation Act, to clarify that the 30 days objection period starts when the objector becomes aware of the award and not upon the date of receiving a formal notice regarding the same. The judgment basically ensures that the objector of the award does not insist on technicalities like the mode of notice and uses those unfairly to gain time. This interpretation aligns with the established precedents and the overarching goal of arbitration to provide an efficient mechanism for dispute resolution.

¹ 1961 SCC OnLine SC 75

² (1999) 9 SCC 610

³ (1993) 3 SCC 445

⁴ (1988) 4 SCC 31

⁵ 1995 Supp (1) SCC 744

Lifeforce Cryobank Sciences Inc. vs. Cryoviva Biotech Pvt. Ltd. and Others

Supreme Court Judgment dated 08.11.2024, 2024 SCC OnLine 3215

Background facts

- Lifeforce Cryobank Sciences Inc. ("**Petitioner**"), which is a company duly incorporated under the laws of the United States of America, had invoked the jurisdiction of this Court under sub-sections (6) and (12) of Section 11 of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**") for appointment of a sole arbitrator in terms of arbitration clause stipulated in the agreements dated 27.12.2009 and 11.02.2010, to adjudicate upon the disputes between the Petitioner and the Respondents.
- The Petitioner's case *inter alia* is that it has purchased the assets of Cryobank International, Inc on 08.06.2010 at a public auction in pursuance of a decree dated 05.05.2010 passed by the Circuit Court of Florida, USA. Following the auction, a certificate of title was issued in its favour certifying purchase of all tangible and intangible assets of Cryobank USA by it. On basis thereof, the Petitioner claims to have stepped into the shoes of Cryobank USA.
- According to the Petitioner, the dispute between the Petitioner and the Respondents arises from Exclusive and Perpetual License Agreement and Share Subscription and Shareholders Agreement.
- The Exclusive and Perpetual License agreement is between Cryobanks USA and Cryobanks India International Pvt. Ltd (now known as "**Cryoviva Biotech Pvt. Ltd./Respondent No. 1**"). The same contains an arbitration clause in Section 7.
- Whereas Share Subscription Agreement is between RJ Corp ("**Respondent No. 2**") acting on behalf of itself and its shareholders, namely, Devyani Enterprises Pvt. Ltd. ("**Respondent No. 3**"), Devyani Overseas Private Ltd. ("**Respondent No. 4**"), RK Jaipuria & Sons (HUF) ("**Respondent No. 5**"), Dhara Jaipuria ("**Respondent No. 6**"); Cryobank USA; and Cryobanks India International Pvt Ltd. The same has an arbitration clause in clause XVII.
- Under both agreements, disputes are referable to a sole arbitrator, with jurisdiction vested in the courts at Delhi.
- According to the Petitioner, under the license agreement, the Respondents were entitled to use Cryobank's intellectual property rights in lieu of consideration which included issue of shares in the Respondent company. The Petitioner submitted that it has stepped into the shoes of Cryobank USA, and this fact was acknowledged by the Respondent company in various correspondences. However, since Petitioner's demand was not met, arbitration clause had to be invoked vide notice dated 29.09.2017.
- The Petitioner has referred to several documents/correspondences to canvass that the respondent has accepted the Petitioner as having stepped into the shoes of Cryobank USA. Petitioner has also annexed certificate to indicate that rights under all existing contracts including intellectual property rights of Cryobank USA were purchased by the petitioner in auction sale.
- In response to the notice of these proceedings, the Respondents' case *inter alia* is that the license agreement was non-assignable, and the Respondents have not accepted the Petitioner as the assignee. There is, therefore, no privity of contract. According to the Respondents the Petitioner has only bought assets of Cryobank USA but, in absence of Respondents' consent, has not stepped into the shoes of Cryobank USA. Hence, the Petition is liable to be dismissed.

Issue(s) at hand?

- Whether the Supreme Court should delve into the issue of privity of contract and assignability, or is it limited to determining the existence of arbitration agreements under Section 11(6-A) of the Arbitration and Conciliation Act, 1996?

Findings of the Court

- The Hon'ble Chief Justice of India, D.Y. Chandrachud and Justice Manoj Mishra observed that, at the stage of considering an application for appointment of an arbitrator, the Court's duty is limited to examining whether an arbitration agreement exists between the parties. The existence of an arbitration agreement is not an issue. While the existence of an arbitration agreement was not in question, the central issue was whether the agreement was between the Petitioner and the Respondent company or between Cryobank USA and the Respondents.
- The Hon'ble Supreme Court referred to the decision in *Khardah Company Ltd. v. Raymon & Co (India) Pvt. Ltd.*, AIR 1962 SC 1810, wherein it was held that an assignment of a contract might result by transfer either of the rights or of the obligations thereunder. But there is a well-recognized distinction between these two classes of assignments. As a rule, obligations under a contract cannot be assigned except with the consent of the promisee, and when such consent is

given, it is really a novation resulting in substitution of liabilities. On the other hand, the rights under a contract are assignable unless the contract is personal in its nature, or the rights are incapable of assignment either under the law or under an agreement between the parties.

- The Hon'ble Supreme Court further relied on *DLF Power Ltd. v. Mangalore Refinery & Petrochemicals Ltd.*, 2016 SCC OnLine Bom 5069, where a single judge of the Bombay High Court held that the arbitration agreement in a contract is a benefit which can be assigned along with the main contract or even otherwise.
- In light of these principles, the Hon'ble Supreme Court held that at the stage of consideration of a prayer under Section 11(6) of the Arbitration Act, the Supreme Court has to confine itself to the examination of the existence of an arbitration agreement (*vide* subsection (6-A) of Section 11), it would not be appropriate for the Court to delve deep into the issue as it could well be considered by the arbitrator on the basis of evidence led by the parties. This approach was particularly justified since the existence of arbitration agreements in both the License Agreement and the Share Subscription and Shareholders Agreement was not in dispute.
- Based on the above findings, the Hon'ble Supreme Court deemed it appropriate to refer the matter to the Delhi International Arbitration Centre ("**DIAC**") for appointment of a sole arbitrator to adjudicate upon the dispute between the parties.
- It was also made clear by the Hon'ble Supreme Court that it had not expressed any opinion on the merits of the claim of either party including with regard to the arbitrability of the dispute. All contentions and pleas were kept open for the parties to raise before the arbitral tribunal.

HSA Viewpoint

The Supreme Court's judgment underscores the limited scope of judicial scrutiny under Section 11(6) of the Arbitration Act, confining itself to whether an arbitration agreement exists and leaving substantive issues for the arbitral tribunal.

The Hon'ble Supreme Court upheld the principle that the questions related to the scope, validity, or applicability of the arbitration agreement should typically be decided by the Arbitral Tribunal. By focusing only on the existence of an arbitration agreement, the Court limited its role at the pre-arbitration stage. This ensures that substantive disputes are not prematurely decided in judicial forums, promoting the autonomy of arbitration.

Before the Hon'ble Supreme Court of India

Mukesh (Appellant) Vs. The State of Madhya Pradesh & Anr. (Respondents)

Civil Appeal No. 14808 of 2024

Background facts

- The issue in the present appeal pertains to the determination of stamp duty payable by Mr. Mukesh, ("**Appellant**"), on a parcel of land in Madhya Pradesh, on which the Appellant's ownership was affirmed through a compromise decree. The Appellant had initiated a civil suit in 2013 before the Civil Judge, Class-2, Badnawar, seeking a declaration and permanent injunction regarding a piece of land situated in Village Kheda, District Dhar, Madhya Pradesh ("**Subject Land**").
- In the civil suit, the Appellant alleged ownership and continuous possession of the subject land; however, the adjoining landowner ("**Respondent No. 2**") had recently sought to sell the subject land to a third party. Respondent No. 2 claimed that he could sell the subject land, under the possession of the Appellant, as the revenue records reflected that Respondent No. 2 was the owner of the subject land. Subsequently, the dispute over the ownership of the subject land was resolved through a compromise between the Appellant and Respondent No. 2, which was not objected to by the State of Madhya Pradesh ("**Respondent No. 1**"). Accordingly, a compromise decree was issued by the National Lok Adalat in 2013, recognising the Appellant's pre-existing rights over the subject land.
- Subsequent to obtaining the compromise decree in his favour, the Appellant sought to rectify the revenue records of the subject land to reflect the actual ownership of the subject land in the Appellant's name. However, the Tehsildar in charge of mutating the revenue records referred the matter to the Collector of Stamps, who determined that the compromise decree amounted to conveyance under Section 22 of the Indian Stamp Act, 1899 ("**Stamp Act**") and therefore ordered that a stamp duty of INR 6,67,500 was payable by the Appellant. Thereafter, the said decision was challenged by the Appellant before the Board of Revenue and the Hon'ble High Court of Madhya Pradesh, both of which upheld the fact that stamp duty would be payable by the Appellant, prompting the Appellant to file the present appeal before the Hon'ble Supreme Court ("**Hon'ble Court**").

Issue(s) at hand?

- Whether a compromise decree recognizing pre-existing rights requires registration under the Registration Act, 1908?
- Whether such a compromise decree is liable for stamp duty under the Indian Stamp Act, 1899?

Findings of the Court

- The Hon'ble Court, in its judgment authored by Hon'ble Justice R. Mahadevan, allowed the appeal and set aside the Hon'ble High Court's decision, and observed the following:
 1. No Requirement for Registration:
 - The Hon'ble Court emphasized that, under Section 17(2)(vi) of the Registration Act of 1908, a decree that refers to the subject property of the litigation and simply recognizes pre-existing rights on the same is exempt from registration. Furthermore, the Hon'ble Court resorted to prior decisions of the Hon'ble Court as well as the requirements of the Registration Act of 1908 and concluded that certain pre-requisite conditions under Section (2)(vi) must be met to exempt a decree from registration.
 - Accordingly, the Hon'ble Court outlined the three conditions under Section 17(2)(vi): (i) The decree must be based on a bona fide compromise without collusion; (ii) The compromise must pertain to the suit property; (iii) The decree must affirm pre-existing rights and not create new ones. The Hon'ble Court observed that since the compromise decree in the present appeal satisfied all these conditions, the registration of the same was unnecessary.
 2. Exemption from Stamp Duty:
 - The Hon'ble Court opined that the compromise decree in the instant appeal merely affirmed the Appellant's pre-existing rights with respect to the subject land, which did not amount to 'conveyance' under Section 3 of the Indian Stamp Act, 1899, as it did not create any new rights. Furthermore, the Hon'ble Court observed that as the compromise decree did not create a new right over the subject land, the compromise decree would not attract stamp duty.

- The Hon'ble Court held that the Hon'ble High Court and the other concerned authorities had erred in determining that the compromise decree would amount to a conveyance, and would therefore attract stamp duty. Additionally, the Hon'ble Court emphasized that it is settled law that revenue records are not documents of title and any entry therein will not *ipso facto* confer ownership. Accordingly, the Hon'ble Court also held that the compromise decree affirmed the Appellant's long-standing possession over the subject land.
- Accordingly, in light of the above, the Hon'ble Court allowed the appeal, and thereby set aside the Hon'ble High Court's decision. Furthermore, the Hon'ble Court directed the concerned authorities to process the mutation of the subject land in favour of the Appellant without imposing stamp duty.

HSA **Viewpoint**

In our opinion this important judgment of the Hon'ble Supreme Court underscores the distinction between decrees affirming pre-existing rights and those creating new rights. The Hon'ble Supreme Court's decision rightly reiterates that compromise decrees that merely affirm existing rights do not require registration or attract stamp duty, and in absence of such a principle, grave loss and injustice would be faced by litigants across India. This ruling safeguards litigants from unnecessary procedural and financial burdens, particularly in genuine disputes resolved amicably through compromise, and avoiding the inaccurate classification of instruments, merely for generation of revenue

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