



Dispute Resolution & Arbitration

Monthly Update
February 2026

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DISPUTE RESOLUTION AND ARBITRATION UPDATE



C. Velusamy Vs. K Indhera

2026 SCC OnLine SC 142, Judgment dated 03.02.2026

Background facts

- The dispute arose out of contractual relationship between the parties which was governed by three agreements to sell. As the dispute arose, the appellant filed an application under Section 11 of the Arbitration and Conciliation Act, 1996 ("the Act"). The Hon'ble High Court vide order dated 19.04.2022 appointed a sole arbitrator.
- The Sole Arbitrator issued notice on 04.05.2022 and held the first preliminary meeting on 28.05.2022. The pleadings of both parties were completed on 20.08.2022, and from this date, the statutory period of twelve months under Section 29A (1) of the Act for passing the arbitral award started running.
- Before expiry of the twelve-month period, both the parties, with mutual consent under Section 29A (3) of the Act, agreed to extend the arbitration mandate by another six months. Accordingly, the time to pass the award stood extended till 20.02.2024. During this period, arbitration proceedings continued, final arguments were completed, and the matter was reserved for award on 09.09.2023.
- The proceedings were reopened on the representation of the parties that settlement discussions are ongoing and are expected to be finalised by 15.11.2023, despite the fact being indicated that award was almost ready. The matter was then adjourned to 07.01.2024 and thereafter to 27.01.2024.
- However, the discussions did not fructify into a settlement and the arbitrator reserved the matter for award on 30.01.2024.
- Notwithstanding the reservation, the discussions between the parties continued until March 2024, when a tripartite agreement was entered into between the Appellant, the Respondent, and a third party, M/s G Square Realtors Private Limited, which agreement was, however, not placed before the arbitrator.

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- The matter was adjourned to 27.04.2024 and thereafter to 04.05.2024, and the arbitrator finally passed the award on 11.05.2024, which was later stamped and issued to the parties on 25.06.2024. In the meantime, the mandate of the arbitrator had terminated on 20.02.2024.
- Being aggrieved by the award passed after expiry of the mandate, the Respondent filed a petition under Section 34 of the Arbitration and Conciliation Act, 1996 seeking to set aside the award on the ground that the mandate of the Arbitral Tribunal had already expired before passing of the award.
- The Appellant filed an application under Section 29A seeking extension of the mandate of the Arbitrator, even though the award had already been passed.
- The Hon'ble High Court, by order dated 24.01.2025, dismissed the application under Section 29A as not maintainable. Further, by order dated 14.02.2025, the Hon'ble High Court allowed the Section 34 petition filed by the Respondent and held that an award passed after expiry of the arbitration mandate is invalid and that the mandate cannot be extended after the award has already been passed.
- Aggrieved by these orders of the Hon'ble High Court, the Appellant filed the present appeal before the Hon'ble Supreme Court.

Issue(s) at hand

- Whether a Court can entertain an application under Section 29A (5) of the Arbitration and Conciliation Act, 1996 to extend the mandate of the arbitrator(s) for making the award even after an 'award' is rendered, though after the expiry of the statutory limit of eighteen-month period?

Findings of the Court

- The Hon'ble Supreme Court while relying upon their previous judgments in *Rohan Builders (India) Pvt. Ltd. v. Berger Paints India Ltd.*, (2025) 10 SCC 802; *Lancor Holdings Ltd v. Prem Kumar Menon*, 2025 SCC OnLine SC 2319 and *Jagdeep Chowgule v. Sheela Chowgule*, 2026 INSC 92, explained the scope of Section 29A of the Act as follows:
 - Sub-section (1) of Section 29A mandates that the award shall be made within 12 months of the completion of pleadings before the Arbitral Tribunal. While sub-section (2) incentivises expeditious making of the Award, proviso to sub-section (4) and sub-section (8) authorises the Court to impose penalty for delay in making the award.
 - Sub-section (3) enables parties, by consent, to extend the period of 12 months for making the award by a further period not exceeding 6 months.
 - If the award is not made within the stipulated period of 12 months or the extended period of 6 months, the mandate of the arbitrator(s) shall terminate.
 - This termination is subject to the power of the Court to extend the period.
 - The 'Court' under Section 29A shall be the Civil Court of ordinary original jurisdiction in a district and includes the High Court in exercise of its original civil jurisdiction under Section 2(1)(e) and shall not be the High Court or the Supreme Court under Section 11(6) of the Act. Section 42 of the Act relating to jurisdiction for applications will also not apply to Section 11 of the Act.
 - There is no statutory prescribed time limit for the Court to exercise the power under Section 29A (4) for extending the period, except for its own discretion. The Court can exercise the power before or after the expiry of the period under sub-sections 29A (1) or (3). Further, there is no prescription of an outer limit for extending the time for the conclusion of arbitral proceedings. Given this power, the Court will exercise it with circumspection, balancing the remedy with the rights of other stakeholders.
 - The power of the Court to extend the time under sub-section (4) may be exercised on an application by any of the parties. Once such an application for extension of time is pending, the mandate of the arbitrator shall continue till the disposal of such application under sub-section (9). The Court shall endeavour to dispose of such an application within 60 days.
 - Delay in the delivery of an arbitral award, by itself, is not sufficient to set aside that award. It is only when the effect of the undue delay in the delivery of an arbitral award is explicit and adversely reflects on the findings therein, such delay and, more so, if it remains unexplained, can be construed to result in the award being in conflict with the public policy of India.
 - Under Section 29A(6), while exercising the power of extension, it shall be open to the Court to substitute one or all the arbitrators. This is a discretionary power that the Court would exercise in the facts and circumstances of the case. Upon substitution, the reconstituted tribunal shall be deemed to be in continuation of the previously appointed tribunal as per Section 29A (7) and shall continue from the stage already reached and on the basis of evidence

already on record. The newly appointed arbitrators shall be deemed to have received the evidence and materials.

- Vesting of the power of substitution, under Section 29A (6), is on the “Court” and this Court is the “Court” as defined in Section 2 (1)(e). The text, as well as the context for identifying the Court in Section 29A (6), as well as in Section 29A (4), is the Court in Section 2(1)(e). The expression ‘Court’ in other provisions must be guided by the meaning given in Section 2(1)(e).
- The Hon’ble Supreme Court has held that Section 29A of the Act does not prohibit a party from seeking extension of an arbitrator’s mandate merely because an award has been passed after the expiry of the prescribed time limit. The law does not create any such absolute bar. If an award is delivered after the mandate has expired, the award is legally ineffective and cannot be enforced under Section 36 of the Act. The Court clarified that such an award does not even require a challenge under Section 34 of the Act.
- The Hon’ble Supreme Court further stated that the arbitrator’s act of passing an award after the expiry of the mandate does not take away the Court’s power to extend the time under Section 29A of the Act. The Court’s jurisdiction exists independently and is not affected by any such action of the arbitrator. The phrase “if an award is not made” in Section 29A(4) must be understood in context. It does not mean that the Court cannot grant extension if an award has already been passed after the time limit. Instead, it simply clarifies that the Court can extend the mandate either before or after the expiry of the prescribed period.
- The Hon’ble Supreme Court observed that the purpose of Section 29A is to ensure that arbitration proceedings are completed properly and result in a binding award in a time bound manner. The provision allows courts to extend time even after expiry, to keep proceedings alive while an extension application is pending, and to allow the same tribunal to continue once time is extended. These features show that Parliament intended to protect and complete arbitral proceedings rather than terminate them on technical grounds.
- The Hon’ble Supreme Court also rejected the concern that allowing extension even after an award has been passed would lead to delay or indiscipline. Extension of time is not automatic. The Court must carefully examine the facts of each case before granting it. Section 29A of the Act gives courts several powers to maintain discipline and efficiency, including reducing the arbitrator’s fees if delay is their fault, imposing conditions while granting extension, substituting arbitrators where necessary, and imposing costs on parties if required.
- The Hon’ble Supreme Court emphasized that laws providing dispute resolution should be interpreted in a way that makes remedies accessible, affordable, quick, and coherent. Therefore, Section 29A must be read in a practical and purposive manner.
- In conclusion, the Court held that an application for extension of the arbitrator’s mandate under Section 29A (5) is maintainable even after the time limit has expired and even if an award has been delivered after such expiry. If sufficient cause is shown and the Court grants extension, the arbitral tribunal can continue the proceedings from where they had stopped and complete them within the extended period.

HSA Viewpoint

The Judgment of the Hon’ble Supreme Court is quite significant as it brings clarity on the issue of expiry of arbitral mandate and post-expiry extension under Section 29A and Section 34 of the Arbitration and Conciliation Act, 1996. Neither Section 29A nor Section 34 specifically mentions what happens if an award is passed after the mandate expires or whether extension can be granted after the award. This judgment fills that gap and gives practical clarity to arbitration law. The Hon’ble Court has clarified that only the Court has the power to extend the mandate and not the arbitrator himself, which helps maintain procedural discipline while still supporting the arbitration process. This will likely reduce technical challenges raised only on delay grounds and shift focus towards deciding disputes on merits. It also discourages parties from using delay as a strategy to invalidate awards. At the same time, this judgment also has a possible downside. Arbitration is meant to be a fast dispute resolution mechanism, but allowing post-expiry extensions through Court may increase time, cost, and court involvement. While the ruling strengthens India’s pro-arbitration approach and supports enforceability of awards, it may also raise concerns about delay and increased judicial intervention, which goes against the basic objective of speedy arbitration.

Justice Yogesh Chandra Gupta Vs. Uttar Pradesh Awastha Vikas Parishad

Review Petition (RP) No : 13/2024 in Re : Appeal No : 677/2022

Background facts

- Justice Yogesh Chandra Gupta was allotted a house by the Uttar Pradesh Awastha Vikas Parishad; however, the possession of the said property was delayed. Consequently, he approached the Adjudicating Officer under the Real Estate (Regulation and Development) Act, 2016 (RERA), seeking redress.
- The Adjudicating Officer granted interest on the amount paid by Justice Gupta due to the delay, treating it as compensation. This decision was subsequently challenged by the Parishad before the Uttar Pradesh Real Estate Appellate Tribunal.
- The Tribunal, in its order dated May 24, 2024, allowed the Parishad's appeals, ruling that when an allottee elects to continue with a project despite delays, the authority to decide and grant interest for delayed possession rests exclusively with the Real Estate Regulatory Authority. The Tribunal held that the Adjudicating Officer lacked jurisdiction to award delay interest under the guise of compensation.
- Consequently, the Tribunal set aside the orders passed by the Adjudicating Officer and granted the allottees liberty to file fresh complaints before the Regulatory Authority.
- Aggrieved by the Order, Justice Gupta has filed a Review Petition under Section 53(4)(e) of RERA challenging the Tribunal's order dated May 24, 2024.

Issue(s) at hand?

- Whether the Adjudicating Officer under RERA has jurisdiction to grant delay interest for delayed possession.
- Whether UP Real Estate Appellate Tribunal was justified in setting aside the orders of the Adjudicating Officer on the ground of lack of jurisdiction.
- Whether a Review Petition under Section 53(4)(e) of RERA is maintainable against the Tribunal's impugned order dated May 24, 2024.

Arguments of the Parties

Arguments by the Applicant

- The Tribunal's composite order dated May 24, 2024 has been challenged on the grounds that it diverges from its own earlier precedent, namely in Appeal No. 60 of 2021 in Justice Satya Narayan Agnihotri v. U.P. Awastha Vikas Parishad order dated June 30, 2022, alongwith Appeal No. 246/2021 having case title U.P. Awastha Vikas Parishad Vs. Justice Satya Narayan Agnihotri and reaffirmed by the Hon'ble High Court in RERA Appeal No. 86 of 2023 wherein the Tribunal upheld the grant of interest as valid compensation for delayed possession under the RERA Act.
- Notably, the jurisdictional issue was neither addressed nor decided in the said earlier order. The earlier decision emphasized that delay interest is compensatory in nature and payable even when the allottee continues with the project and takes possession.
- Furthermore, the Tribunal had previously upheld the Adjudicating Officer's power to grant delay interest in similar cases, thereby establishing a contradictory stance.
- The Tribunal's recent composite order dated May 24, 2024 incorrectly posits that compensation can be granted only upon the allottee's withdrawal from the project, which deviates from established precedent. The Tribunal's failure to consider binding decisions has led to inconsistency, warranting reconsideration of the impugned order.

Arguments by the Respondent

- The Respondent has contested the maintainability of the Review Petition, arguing that it lacks new material or apparent error on record. It was emphasized that a review cannot be treated as a substitute for an appeal, as this would undermine the hierarchical structure of the judicial process.
- The Respondent relied on the Supreme Court decision in M/s Newtech Promoters and Developers Pvt. Ltd. v. State of U.P., which delineates the distinct roles of the Regulatory Authority and the Adjudicating Officer. According to this precedent, the Adjudicating Officer's purview is limited to deciding compensation, whereas interest for delay in possession falls within the jurisdiction of the Regulatory Authority.
- The Respondent further argued that the Tribunal's decision was correct, and the Review Petition, lacking merit, deserves dismissal.

Findings of the Court

- The Tribunal, in its judgment, undertook a meticulous examination of Order 47 Rule 1 of the Civil Procedure Code, the Real Estate (Regulation and Development) Act, 2016 (RERA), and relevant precedents. A thorough analysis of the earlier composite order dated May 24, 2024 was also conducted, leading to several key observations.
- Regarding the scope of review jurisdiction, the Tribunal emphasized that a Review Petition is subject to a very limited scope, permissible only in cases of errors apparent on the face of the record. It was reiterated that a review cannot be utilized as a means to reargue the case on merits, and mere disagreement with the earlier decision does not constitute a valid ground for review.
- In relation to jurisdiction under the RERA Act, the Tribunal held that when an allottee continues with the project despite delays, the claim is confined to interest, which falls exclusively within the purview of the Regulatory Authority. The Adjudicating Officer's jurisdiction is restricted to deciding compensation and does not extend to interest for delayed possession.
- The Tribunal's decision was found to be consistent with the Supreme Court's precedent in *Newtech Promoters*, which clearly delineates the roles of the Regulatory Authority and the Adjudicating Officer. The Apex Court's Order clarified the jurisdictional divide between the Regulatory Authority and the Adjudicating Officer under the Real Estate (Regulation and Development) Act, 2016. The Apex Court has held that the Regulatory Authority has the power to examine and determine matters related to refund of amount, interest on refund, delayed delivery of possession, and penalty, whereas the Adjudicating Officer has exclusive jurisdiction to adjudicate compensation and interest thereon under Sections 12, 14, 18, and 19. This distinction is based on a conjoint reading of Sections 18, 19, 71, and 72 of the Act, providing clarity on the respective roles of the Authority and the Adjudicating Officer. The composite order dated May 24, 2024 was deemed to have correctly applied the law laid down by the Supreme Court, with no legal error or misinterpretation detected.
- The Tribunal has upheld its earlier composite order dated May 24, 2024, dismissing the Review Petition filed by the Applicant. In its decision, the Tribunal noted that the review Applicant had failed to identify any apparent error in the composite order, thereby necessitating its dismissal.
- The Tribunal reaffirmed that the Adjudicating Officer lacks jurisdiction to grant delay interest, and that allottees seeking such relief must approach the Regulatory Authority. This ruling underscores the Tribunal's consistent stance on the delineation of powers between the Adjudicating Officer and the Regulatory Authority, providing clarity on the appropriate recourse for allottees seeking compensation for delayed possession.

HSA

Viewpoint

This landmark ruling serves to elucidate the oft-blurred distinction between "interest" and "compensation" within the RERA framework, thereby injecting much-needed clarity into real estate litigation. By adhering closely to the Supreme Court's precedent and the statutory framework, the Tribunal has ensured jurisdictional uniformity and predictability, which, although potentially restrictive for some allottees, ultimately reduces adjudicatory overlap and enhances procedural transparency.

A key takeaway from this judgment is that delayed possession interest falls exclusively within the purview of the Regulatory Authority, and not the Adjudicating Officer. This decision has far-reaching implications for various stakeholders:

Allottees are now aware that they must approach the Regulatory Authority for delayed possession interest, thereby avoiding unnecessary litigation.

Adjudicating Officers are reminded of their limited jurisdiction, preventing overreach and ensuring strict adherence to the RERA Act.

Regulatory Authorities are empowered to decide claims related to delayed possession interest, promoting uniformity in decision-making.

Developers and housing authorities benefit from procedural certainty, protecting them from conflicting orders and facilitating smoother project implementation.

RERA jurisprudence is enriched by this judgment, which aligns Tribunal practice with the Supreme Court's ruling in *Newtech Promoters* and fosters consistency in real estate adjudication.

Ultimately, this ruling reinforces the importance of approaching the correct forum for relief, promoting a more efficient and streamlined dispute resolution process under RERA.

R Savithri Naidu Vs. M/s The Cotton Corporation of India Ltd and Anr.

Special Leave Petition No. 19779 of 2024

Background facts

- A Sale Agreement dated January 22nd 1998 (“Sale Agreement”) was entered between M/s The Cotton Corporation of India Ltd and Anr. (“Respondent No.1”) and M/s Lakshmi Ganesh Textiles Limited (“Respondent No.2”) (jointly known as “Respondents”) for sale of cotton bales.
- Since dispute arose between the parties in respect of recovery of sale price for the cotton the Respondent No.1 filed an arbitration petition for recovery of Rs 37,51,380/-.
- The Arbitrator passed an award dated June 11th 2001 in favour of Respondent No.1 for an amount of Rs 26,00,572.90/- along with further interest of 18%.
- Respondent No. 2 filed an Arbitration Petition under Section 34 (“Arbitration Petition”) of the Arbitration and Conciliation Act, 1996 (“Act”) challenging the award passed by the Arbitrator.
- On January 21st 2013 the Arbitration Petition was dismissed, and the Respondent No.2 did not prefer any further appeal.
- Respondent No.1 filed an execution proceeding on July 16th 2019 to execute the award dated June 11th 2001.
- Respondent No. 2, was a borrower of ICICI Bank, and defaulted in repayment of its dues, pursuant to which ICICI Bank initiated recovery proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (“SARFAESI Act”) on November 11th 2013 and attached the properties of Respondent No. 2, including the Schedule of Properties attached by Respondent No.1 in the execution proceeding. During the pendency of such proceedings, a tripartite agreement was entered into between ICICI Bank, Respondent No. 2 and the R Savithri Naidu (“Appellant”) a Non-Executive Director of Respondent No.2 and mother of the Managing director of Respondent No.2. The tripartite agreement culminated into execution of a Sale Deed dated April 23rd 2015 in favour of the Appellant.
- On August 19th 2021 the Executing Court ordered conditional attachment of properties of Respondent No.2 attached in the Schedule of Properties.
- Appellant filed an execution application in the execution proceeding claiming for removal of the attachment order since she is the absolute owner of the Schedule of Properties attached in the execution proceeding.
- The Executing Court dismissed the claims of the Appellant in the execution application vide order dated January 3rd 2022. The Appellant filed a revision before the High Court challenging the order dated January 3rd 2022.
- The High Court dismissed the revision vide order dated July 12th 2024.
- Aggrieved by the order of the High Court, the Appellant filed the present proceeding.

Issue(s) at hand?

- Whether a purchaser of property after the passing of an arbitral award and during pendency of execution proceedings can resist execution of the arbitral award on the ground of being a bona fide purchaser?

Findings of the Court

- At the outset the Hon’ble Supreme Court held that while fraud between the Appellant and Respondent No. 2 was not conclusively inferred, the Appellant failed to establish that the sale of the properties attached in the execution proceeding was made without notice of the existing arbitral liability, particularly in light of the non-production of the tripartite agreement forming the basis of discharge of ICICI Bank’s claim. The Hon’ble Supreme Court further held that proceedings under the SARFAESI Act are independent in nature and do not afford immunity or protection against other lawful claims and accordingly rejected the Appellant’s contention of bona fide purchase without notice.
- The Hon’ble Supreme Court held that the doctrine of *lis pendens* is applicable even in cases where the arbitral award or decree is for recovery of money, and that such issue is no longer *res integra*.
- The Hon’ble Supreme Court relied upon the judgments in the case *Annakkili v. Murugan & Anr.*¹, and *Danesh Singh and others v. Har Pyari (Dead) Thr. LRs*² and held that Section 52 of the Transfer of Property Act, 1882 applies equally to money recovery proceedings, as the pendency of a suit or

¹ 2021 SCC OnLine Mad 1673

² 2025 INSC 1434

proceeding continues until complete satisfaction or discharge of the decree or award. The Hon'ble Court held that the pendency of proceedings continues until complete satisfaction of the decree or award, and that parties are restrained from creating third-party rights in the subject property during such pendency, failing which the decree would be rendered nugatory.

- The Hon'ble Supreme Court further relied upon the judgment in the case of *Jini Dhanrajgir v. Shibu Mathew*³ and held that a decree-holder's success is rendered meaningless unless actual relief is realised. The Court emphasized that the objective of the legal system must extend beyond disposal of cases to ensuring that litigants effectively enjoy the fruits of their decrees, and that procedural law must be applied to secure substantive justice rather than merely formal outcomes.
- The Hon'ble Supreme Court held that the Appellant was a purchaser of the properties mentioned in the Schedule of Properties subsequent to the passing of the arbitral award and during the pendency of execution proceedings and had failed to discharge the burden of proving that the sale was effected without notice of the existing arbitral claim.
- Accordingly, the Hon'ble Supreme Court further held that there is no inconsistency in the impugned orders and accordingly dismissed the Civil Appeal, while directing the Executing Court to conclude the execution proceedings within a period of two months from the date of this order.

HSA Viewpoint

The judgment adopts a robust and execution-centric approach to enforcement of arbitral awards, reinforcing the principle that decrees and awards must translate into real, tangible relief rather than a paper declaration. By unequivocally holding that a purchaser subsequent to the passing of an arbitral award and during the pendency of execution proceedings cannot claim the protection of a bona fide transferee, the Court has strengthened the finality and efficacy of arbitral outcomes.

The Court has rightly clarified that recovery proceedings under the SARFAESI Act operate independently and do not immunize the judgment debtor from other lawful claims, including execution of arbitral awards. The refusal to treat the Appellant as a stranger to the transaction, particularly in light of her close association with the judgment debtor and the non-production of the tripartite agreement, reflects a realistic appreciation of commercial conduct and prevents misuse of formalistic defenses to obstruct execution.

By reaffirming the applicability of the doctrine of *lis pendens* even in money decrees and arbitral awards, the judgment decisively curbs strategic alienations aimed at frustrating enforcement. The decision aligns procedural discipline with substantive justice, ensuring that arbitral awards are not rendered illusory by post-award transfers, and significantly bolsters confidence in arbitration as an effective dispute resolution mechanism.

³ (2023) 20 SCC 76

M. V. Omni Projects (India) Ltd. Vs. Union Of India & Ors.

2026:DHC:287-DB

Background facts

- The parties entered into an agreement on 12th January, 2016, which included Clause 25, a provision allowing the Chief Engineer of CPWD to appoint sole arbitrator.
- Disputes having been arisen between the parties, the Appellant issued a notice to the respondent under section 21 of the Arbitration and conciliation act, 1996, (“the Act”) on 11th October, 2018, requesting the appointment of an independent arbitrator.
- As the Respondent failed to appoint an arbitrator, the appellant instituted an arbitration petition under section 11 (6) of the Act, having details ARB P 199/2019.
- On 23rd August, 2019, Ld. Single Judge disposed of the arbitration petition, confirmation that the Respondent will appoint the arbitrator in terms of the contract.
- On 6th September, 2019, the Additional Director General of CWPD unilaterally appointed an advocate as a Sole Arbitrator.
- The arbitration proceeded without protest from either party and concluded with an award dated 30th May, 2023, which was adverse to the Respondent.
- The Respondent challenged the abovementioned award. The said challenge was allowed on 8th May, 2024, passed by the Ld. Single Judge of the Delhi High Court, thereby, set aside the appointment of the Arbitrator, ruling that the arbitrators appointment was illegal and violated Section 12 (5) of the Act.
- The Appeal was filed by the Appellant against this order passed by Ld. Single Judge of Delhi High Court..

Issue(s) at hand?

- Whether the arbitral award was liable to be set aside solely because the arbitrator was unilaterally appointed in violation of Section 12(5) of the Act, despite the Appellants initial request for the appointment and subsequent participation in the proceedings?

Findings of the Court

- Under section 12 (5) of the Act prescribe any person, whose relationship with the parties, falls under any of categories specified in the Seventh Schedule to the Act, from being appointed as an arbitrator. This principle was established in *Bhadra International (India) (P) Ltd v. Airports Authority of India*⁴, *TRF Ltd v. Energo Engg. Projects Ltd*⁵, *Bharat Broadband Network Ltd. v. United Telecoms Ltd.*⁶, *Perkins Eastman Architects DPC v. HSCC (India) Ltd.*⁷, and *Haryana Space Application Centre v. Pan India Consultants (P) Ltd.*⁸
- As a result, arbitration clauses which allow either one of the parties to appoint the arbitrator have been held, in the said decisions, to be illegal and incapable of being enforced in law. In all such cases, therefore, it is the Court who has to appoint the arbitrator.
- The court emphasized that the proviso to Section 12 (5) requires an “express agreement in writing” to waive such ineligibility. Following in Bhadra decision, the court held that the scope of proviso of Section 12 (5) is clearly explained, which mandates a written express agreement must be deliberate, stating a clear intention of the parties, after the dispute has arisen.
- The court ruled that participation in proceedings, filing a statement of claim, or “no objection” recorded in procedural orders does not constitute an express agreement in writing. Conduct cannot substitute for the mandatory statutory requirement of a formal written waiver. The appointment was unilateral and lacked an express written waiver, the arbitrator was de jure ineligible. Consequently, the entire arbitral proceedings were vitiated *ab initio*, rendering the award invalid.
- The court noted that to safeguard proceedings, the party making a unilateral appointment must ensure they obtain an express written agreement as stipulated in the proviso to Section 12 (5). Therefore, rendered such a finding to be *ex facie* illegal.

HSA Viewpoint

The Court has affirmed the applicability of Section 12(5) of the Arbitration and Conciliation Act, 1996, under which an express written agreement is necessary to permit the unilateral appointment of an arbitrator.

It may be observed that the Hon’ble Court has adopted an approach to be consistent and in line with the prior precedents.

The court has chosen to focus on the fundamental principles of arbitration, i.e. impartiality of the arbitrator and party autonomy in choosing the arbitrator. However, it may have led to the unfortunate consequence where a matter disputed in 2019 will have to be re-litigated in 2026, which could also be a deviation from prompt and effective dispute resolution which is the benchmark of Arbitration.

⁴ 2026 SCC OnLine Sc 7

⁵ (2017) 8 SCC 377

⁶ (2019) 5 SCC 755

⁷ (2020) 20 SCC 760

⁸ (2021) 3 SCC 103

Elegna Co-operative Housing and Commercial Society Ltd. Vs. Edelweiss Asset Reconstruction Company Ltd. & Anr.; with Takshashila Heights India Pvt. Ltd. Vs. Edelweiss Asset Reconstruction Company Ltd. & Anr.

Civil Appeal No. 10261 / 2025 with Civil Appeal No. 10012 / 2025 ("Civil Appeals")

Background facts

- The Appellant No. 2 had availed financial assistance of INR 70 Crores (Indian Rupees Seventy Crores Only) from ECL Finance Ltd. ("Original Lender") in the year 2018, for the development of a residential-cum-commercial project titled "Takshashila Elegna".
- Upon default in repayment by the Appellant No. 2, the last payment was made on 30.09.2021, after which the loan accounts were declared Non-Performing Assets ("NPA") on 30.12.2021.
- The parties entered into a Restructuring-cum-One Time Settlement Agreement on 29.12.2023 for INR 55 Crores (Indian Rupees Fifty Five Crores Only). A sum of INR 5.5 crore was paid towards the first instalment, and Appellant No. 2 asked for No Objection Certificate ("NOC") to sell the secured units.
- The Respondent declined to issue the NOC and thereafter filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC") before the National Company Law Tribunal ("NCLT").
- The NCLT dismissed Section 7 application, holding that invocation of the section 7 proceedings was in the nature of a recovery action rather than for insolvency resolution.
- The Respondent appealed before the National Company Law Appellate Tribunal ("NCLAT"). Thereafter Appellant No. 1 filed an intervention application under Rule 11 of the NCLAT Rules, 2016, asserting that the proprietary and contractual rights of its members would be affected.
- The NCLAT allowed the appeal against Appellant No. 2, while rejecting the intervention application on the ground of lack of *locus standi*.
- Aggrieved thereby, Appellant Nos. 1 and 2 filed the present Civil Appeals.

Issue(s) at hand?

- Whether the NCLAT was correct in admitting Corporate Debtor into the Corporate Insolvency Resolution Process ("CIRP")?
- Whether the NCLAT was correct in rejecting the Intervention application filed by the Society.

Arguments of the Parties

Arguments by Appellant No. 1

1. Appellant No. 1 asserted that it represented the collective interests of homebuyers, whose proprietary rights were directly affected by the outcome of the appeal.
2. It contended that the rejection of its intervention violated Article 14 and Article 21 of the Constitution and the principles of natural justice.
3. The classification between unit holders of complete and incomplete towers drawn by the NCLAT was arbitrary and bears no rational nexus to the object sought to be achieved.

Arguments by Appellant No. 2

1. Appellant No. 2 submitted that the project was a going concern, with substantial completion and adequate receivables from unsold inventory to meet its liabilities.
2. It contended that the Respondent invoked the CIRP for coercive recovery, contrary to the object of resolution under IBC.
3. Reliance was placed on Vidarbha Industries Power Ltd. v. Axis Bank Ltd. to contend that the adjudicating authority retains discretion to decline admission of a Section 7 application.
4. The project's going concern status, substantial completion, availability of receivables, and the non-wilful nature of default arising from the Respondents' refusal to issue a provisional NOC, the initiation of CIRP lacked bona fides.
5. The proceedings amounted to a misuse of the IBC as a recovery mechanism, rather than a genuine resolution process.

Arguments by Respondent

1. The Respondent submitted that the scope of inquiry under Section 7 of the IBC is limited to the existence of a financial debt and default. once the requirements are satisfied, admission of the application is mandatory.

2. With respect to the Appellant No. 1, the Respondent contended that it lacked *locus standi* and that it was a necessity and urgency in admitting the Appellant No. 1 into CIRP. Appellant No. 1 was only a maintenance society and not a “financial creditor” within the meaning of the IBC.
3. Consequently, the Society had no right to intervene in the Section 7 proceedings.

Findings of the Court

- **Rejection of Society’s intervention** – The Supreme Court analysed the *locus* of the Society as a Distinct Juristic Entity which is separate to its members and unless it has advanced some financial assistance or has executed allotments to the corporate debtor, the Society cannot claim to be a financial creditor under Section 5(7) of IBC. Section 5(8)(b) is applicable to individual allottees but not to associations or societies. Therefore, a Society of a resident welfare association would not have a *locus standi* to intervene in the section 7 proceedings as it is not a creditor or an authorized representative of the allottee.
- **Affirming the CIRP proceedings**- The Court reaffirmed that at the admission stage under Section 7 of the IBC, an adjudicating authority’s inquiry is confined strictly to the existence of a financial debt and the occurrence of default. Considerations such as business viability, project completion, availability of receivables, or alleged inequitable conduct of the creditor are legally irrelevant at this stage. The Court clarified that the precedent of Vidarbha Industries operates only as a narrow, fact-specific exception where the corporate debtor has an adjudicated and realisable claim exceeding the debt and no such claim was applicable to this case. The Court reiterated that issues of feasibility and viability fall within the exclusive domain of the Committee of Creditors and are non-justiciable at the threshold stage of admission under Section 7. Therefore, Court held that the NCLAT was fully justified in admitting the Appellant 2 into CIRP.
- **Guidelines for Committee of Creditors** - To enhance transparency, accountability, and protection of homebuyers’ interests, the court issued prospective directions mandating: (i) full and comprehensive disclosure of all allottees’ details in the Information Memorandum; (ii) a reasoned, written justification where the Committee of Creditors (“CoC”) decides that handing over possession under Regulation 4E of the CIRP Regulations is not viable; and (iii) a reasoned recommendation for liquidation, demonstrating due application of mind and consideration of all viable alternatives in line with the objectives of the Insolvency and Bankruptcy Code.

HSA Viewpoint

The judgment reaffirms that once a financial debt and default are established, admission of a Section 7 application is mandatory, leaving little discretion at the initial stage. By limiting *Vidarbha Industries* to exceptional circumstances, the Court prevents arguments based on project viability from weakening the statutory trigger for initiating CIRP. At the same time, the Court improves accountability in real estate insolvency cases by requiring the Committee of Creditors to give written reasons when refusing possession under Regulation 4E or recommending liquidation. These directions maintain the primacy of the CoC while ensuring that decisions affecting homebuyers are reasoned, transparent, and open to review under the IBC framework.

Sanjay Paliwal & Another Vs. Bharat Heavy Electricals Ltd.

Civil Appeal No. 6075 /2016 arising out of Original Suit (OS) No. 27/1994, 33/2001, 32 /2004

Background facts

- The Appellants were partners of a firm named Vaishali Builders.
- The Appellants purchased a parcel of land measuring 15 Biswa, forming part of Khewat No. 8/4, Khatauni No. 36, Khasra No. 436, situated at Ahmedpur Karachh, Jwalapur, District Haridwar.
- The purchase was made through a registered sale deed dated 06.01.1992 from Laxminarayan Jha, the recorded zamindar/landholder, and Bashir Khan, a cultivating tenant of Shreni-III.
- After the purchase, the Appellants firm was mutated in the revenue records, and the Appellants claimed to have remained in continuous ownership and possession of the land.
- The land in dispute was shown as ABCD in the site map filed with the plaint, with specific measurements, and was bounded on three sides by lands belonging to the Respondents and others, while a pucca public road lay on its eastern side.
- According to the Appellants, access to this road was essential for the enjoyment and use of their land.
- The dispute arose when the Respondents constructed a boundary wall along the pucca road, allegedly between points C and D, which, according to the Appellants, blocked their access to the road.
- Despite repeated requests by the Appellants to remove the obstruction, the Respondents allegedly refused, prompting the Appellants to initiate legal proceedings.

Issue(s) at hand?

- Whether the Judgment and Decree of dismissal of the Suit passed by the High Court warrants interference.
- What order, if any, is required to be passed in the present appeal.
- Whether a suit for mandatory injunction simpliciter is maintainable when title, possession, and identity of the property are disputed.
- Whether the appellants were required to seek the relief of possession.

Arguments of the Parties

- Arguments by Mr. S.R. Singh (representing the Appellants):
 1. High Court intervened in the concurrent findings of fact recorded by the Trial Court and First Appellate Court, which were not open to challenge in a second appeal under Section 100 Code of Civil Procedure, 1908 ("CPC").
 2. The suit was maintainable as the Appellants were already in possession, and therefore a suit for mandatory injunction simpliciter was valid.
 3. The High Court misapplied Section 41(h) of the Specific Relief Act, 1963 ("Specific Relief Act") by holding that an equally efficacious remedy (suit for possession) was available.
 4. Reliance was placed on Sant Lal Jain v. Avtar Singh and Joseph Severance v. Benny Mathew to show that a mandatory injunction can be granted without seeking possession where title/possession is not disputed.
- Arguments by Mr. Shailesh Madiyal (representing the Respondent):
 1. The appeal is not maintainable since the High Court correctly held that the suit for mandatory injunction was barred under Section 41(h) of the Specific Relief Act.
 2. The Appellants failed to establish title, possession, and identity of the disputed land, making a suit for injunction simpliciter untenable.
 3. The correct remedy for the Appellants was a suit for possession and/or declaration, not a mere injunction.
 4. Reliance was placed on Anathula Sudhakar v. P. Buchi Reddy to support the principle that injunction cannot be granted when title and possession are disputed.

Findings of the Court

- The Supreme Court ("Court") dismissed the appeal and upheld the judgment of the High Court, making several important findings:
 1. **Bar under Section 41(h) of Specific Relief Act – Equally Efficacious Remedy**
The Court held that construction of a boundary wall on disputed land amounts to trespass and, in

effect, dispossession. In such circumstances, the proper and efficacious remedy is a suit for possession, and not a bare suit for mandatory injunction. Where title is clouded and possession is contested, an injunction simpliciter cannot place the Appellants in the same position as a decree for possession. Consequently, the suit was barred under Section 41(h) of the Specific Relief Act.

2. **Distinction Between Permissive Possession and Title Disputes**

The Court rejected the appellants' reliance on *Sant Lal Jain v. Avtar Singh* and *Joseph Severance v. Benny Mathew*, clarifying that these precedents apply only to cases of permissive possession (e.g., licensee/permission-based occupation) where there is no dispute as to title or identity of property. The present case involved rival claims of ownership and possession, making those judgments inapplicable.

3. **Reaffirmation of Anathula Sudhakar Principles**

The Court reaffirmed that where title and possession are disputed, the Appellants must seek declaration and possession. A suit for injunction alone is not maintainable where there is a serious cloud over title or possession. The present case squarely fell within this category.

4. **Failure to Identify Property and Location of the Wall**

The Court found fatal evidentiary defects in the Appellants' case. There were no clear measurements of the wall, inconsistencies in revenue records and Commissioner reports, and an overall failure to establish conclusively that the wall stood on the exact portion of land purchased by the Appellants. In the absence of precise identification, a decree for mandatory injunction directing demolition was held unsustainable.

5. **Justification for High Court's Interference under Section 100 CPC**

The Court acknowledged that the High Court correctly exercised its powers under Section 100 of the CPC, by setting aside the judgments of the trial court and the first appellate court. Due to serious legal errors, including misapplication of established legal principles. These errors raised substantial questions of law, justifying interference in the second appeal.

HSA
Viewpoint

The judgment is a milestone in reaffirming that a suit for mandatory injunction cannot be used as a substitute for a suit for possession when title and possession are disputed. It strengthens the principle that courts will not grant relief based on weak or unclear evidence and underscores the necessity of proper identification of property, clear title, and rightful possession.

Sarita Tiwari Vs. M/s Deccan Charters Pvt. Ltd.

2026: DHC:636-DB

Background facts

- The Appellant was appointed as a Trainee Aircraft Maintenance Engineer (AME) on probation on 1st August 2006, for an initial period of three months.
- The appointment letter specified that the Appellant would be deemed to continue on probation until confirmed in writing and further any such period after the initial period of probation would be an extension of the probation period.
- On 13th October 2006 while the Appellant was still on probation, she received a warning letter *inter alia* citing lack of punctuality and poor performance.
- On 7th August 2007, she was called to provide a written explanation for alleged misbehaviour. On 9th August 2007, the Respondent finally terminated her services citing repeated misbehaviour and insubordination with superiors.
- The termination was challenged before the Central Government Industrial Tribunal ("Tribunal") which vide its award dated 4th October 2012 found the termination illegal and ordered reinstatement with full back wages.
- The order of the Tribunal was subsequently challenged before the Single Judge who set aside the order, stating that this was a case of termination simpliciter, and further, holding that the Appellant was a probationer and therefore not a "workman" under Section 2(s) of the Industrial Disputes Act, 1947 ("Act") and accordingly was not entitled to any relief.
- Aggrieved by the order of the Ld. Single Judge dated 27th August 2019 ("Impugned Order") the Appellant filed the subject Civil Miscellaneous Appeal to challenge the Impugned Order.

Issue(s) at hand?

- Whether an employee on the probation period falls within the definition or meaning of a "workman" under Section 2(s) of the Industrial Disputes Act, 1947?
- Whether the termination of a probationer's services based on alleged misconduct, without a formal inquiry, constitutes a termination simpliciter or a punitive dismissal?
- Whether wages paid under Section 17-B of the Act are recoverable if the employer ultimately succeeds in the litigation??

Findings of the Court

6. On the first issue, the Hon'ble Court, fundamentally disagreed with the Ld. Single Judge's interpretation of the Section 2(s) of the Act. It observed that the statutory definition of a "workman" is exhaustive, clearly specifying who is excluded and no demarcation is made between permanent, temporary, or probationary staff. The categorisation of "workman" is based on the nature of duties performed rather than the designation or the stage of employment. Therefore, so long as a person is employed to do any manual, unskilled, skilled, technical, operation, clerical or supervisory work for hire or reward, he is a "workman" under the Act and will get the benefit of the Act. Since the Appellant was engaged as a Trainee Aircraft Maintenance Engineer, a role involving technical and skilled labour for reward, she squarely fell within the definition of a "workman" allowing her to avail the protection of labour laws.
7. If the termination is punitive in nature, an inquiry has to be conducted, and due opportunity is to be given to the dismissed employee to be heard. The Hon'ble Court therefore engaged in an analysis whether in the present case, the termination was "stigmatic" by relying on the three-fold test established in *Pavanendra Narayan Verma v. Sanjay Gandhi PGI*¹ i.e.:
 - Was there a full-scale formal inquiry or investigation in the matter regarding the Appellant's termination?
 - Were there allegations involving profound wickedness or serious misconduct?
 - Was there a formal finding of guilt?
8. As all the aforementioned elements were absent, on the second issue, the Hon'ble Court observed that, found the termination was not a "punishment" in the legal sense, but a valid exercise of the employer's right to assess a probationer's suitability and accordingly classified the action as 'termination simpliciter'. In contrast to a dismissal which is a punitive and stigmatic termination, 'termination simpliciter' refers to the straightforward, non-punitive termination of an employee's contract by an employer without assigning specific cause or fault, usually based on the terms of the

¹(2002) 1 SCC 520

contract. It was also elucidated stigma is implicit in termination but that does not mean a simple termination is stigmatic.

9. On the third issue i.e. with respect to the financial protection under Section 17-B of the Act, relying upon *Dena Bank v. Ghanshyam*² the Hon'ble Court elucidated on the expression "full wages last drawn" and held that when a Labor Court orders reinstatement and the employer challenges that order in a High Court, the employer must pay the workman the last-drawn wages during the pendency of the litigation. Crucially, it ruled that these payments are in the nature of "subsistence allowance" to prevent the workman from starving while the employer uses its superior resources to litigate. Also relying upon *Dilip Mani Dubey v. Siel Ltd.*³ even though the Hon'ble Court ultimately upheld the termination order being as valid against the 'workman', yet the employer will not have the right to recover the amount already paid to the 'Workman' pursuant to the orders passed and thereby wages already paid under Section 17-B would be non-recoverable.

HSA Viewpoint

This judgment is a valuable precedent in the employment jurisprudence, as it tries to effectively balance the managerial rights of an employer with the statutory protections extended to the employees even in the 'probation period'.

The three critical aspects of this ruling are summarised as follows:

By analysing the definition given under the Act and recognising probationers as "workmen" it ensures that probationers are not left in a "legal vacuum" where they are subject to the obligations of a workman without access to the remedies provided by the Act.

By reiterating the principles of *Pavanendra Verma*, it establishes that simply mentioning "misbehaviour" or "unsatisfactory performance" as the reason for termination in internal files, or even in a notice, does not automatically make a termination punitive. For a termination to be "stigmatic," there must be a formal finding of guilt through an inquiry.

The Court's decision regarding Section 17-B wages emphasizes the "humanitarian" nature of Indian labour law. By making these wages non-recoverable even when the employee loses the case, the Court recognizes the economic disparity between a corporation or employer and an individual employee.

This ruling may serve as important reminder to employers to word their termination orders judiciously and conduct a procedural enquiry, to avoid unnecessary litigation.

²(2001) 5 SCC 169

³(2019) 4 SCC 534

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