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Dispute Resolution & Arbitration

Monthly Update

December 2023

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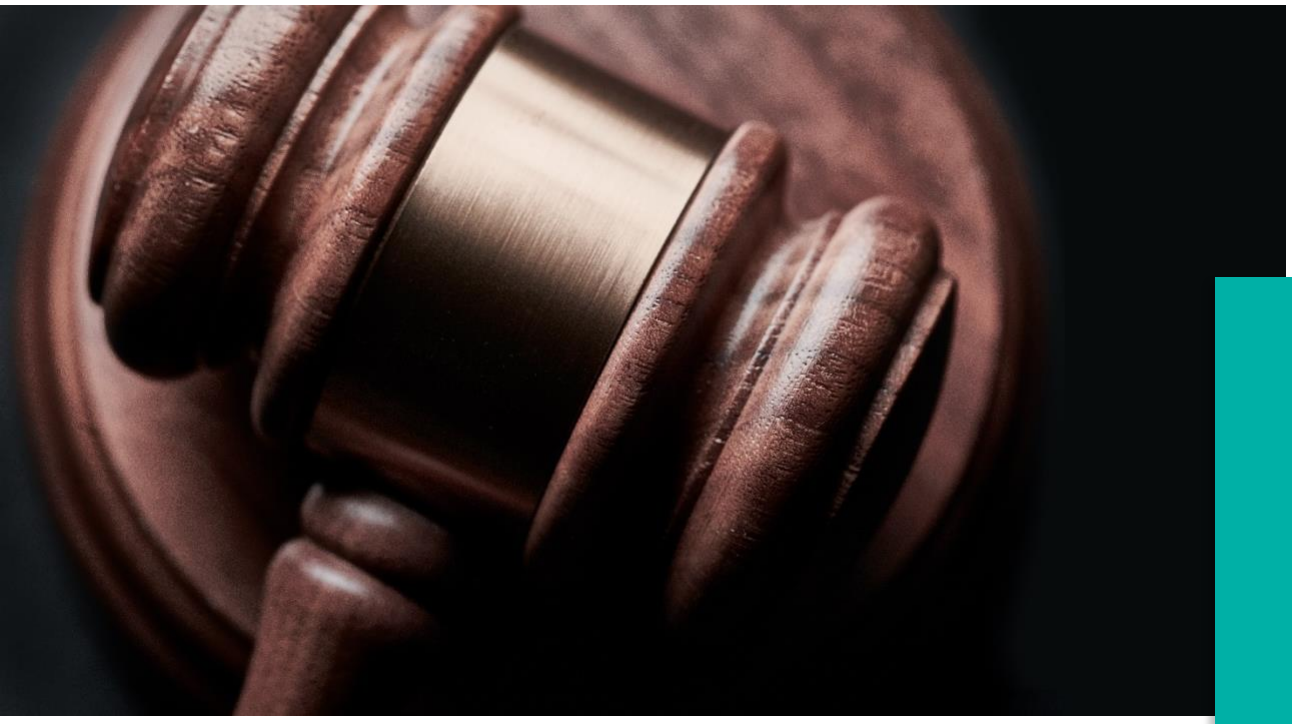
DISPUTE RESOLUTION AND ARBITRATION UPDATE



Contributors

Faranaaz Karbhari
Counsel

Himani Singh
Partner

Rahul P Jain
Associate Counsel

Khushboo Rupani
Principal Associate

Mahafrin Mehta
Principal Associate

Akriti Shikha
Senior Associate

Juhi Dave
Senior Associate

Sharan Shetty
Associate

Shrusti Shah
Associate

Payal Malhotra v. Sulekh Chand

Delhi High Court | W.P. (CRL) 1366/2023 and CRI. M.A. 12888/2023

Background facts

- Sulekh Chand (**Respondent**) had instituted a complaint under Section 138 of the Negotiable Instruments Act, 1881 (**Act**) against Payal Malhotra (**Petitioner**) in respect of non-payment against one dishonored cheque amounting to for the amount of INR 5,82,217 issued by the Petitioner in favor of the Respondent. Thereafter, the Metropolitan Magistrate vide an Order dated March 03, 2023 issued summons under Section 138 of the Act requiring the Petitioner to attend the Court.
- Being aggrieved, the Petitioner filed a petition before the Hon'ble Delhi High Court of Judicature at Delhi, New Delhi (**HC**) invoking its jurisdiction under Section 482 of the Code of Criminal Procedure, 1972 (**CrPC**).
- The Petitioner's Counsel argued that on November 21, 2014, a cheque was given to the Respondent Petitioner from the firm of Petitioner Respondent and that the impugned blank cheque was issued to the Respondent for the purpose of security, not in discharge of any legally recoverable debt or liability as alleged by the Respondent. He submitted that the said cheque was misused by the Respondent and further contended that the said amount had been duly paid by the Petitioner, which was evident from the bank statements as well as the ledger account maintained by the Petitioner during the course of regular business.
- Additionally, questions were also raised as to the difference in handwriting in the issued cheque in question.
- Lastly, it was averred that the Respondent was demanding a total sum of INR 5,82,217 which included INR 2,38,602 against the alleged supply of materials along with INR 3,43,613 towards the interest amount at 24% p.a. from the date of cheque being due till the actual realization of the sum, which was completely illegal and unjustified.

Issue at hand?

- Whether an offence under Section 138 of the Act is made out and whether the High Court can exercise its powers and jurisdiction under Section 482 of the CrPC in the present case?

Decision of the Court

- At the outset, the HC noted that a cheque given for security, when dishonored, forms part of the offence under Section 138 of the Act. The HC in its reasoning stated that in various landmark judgements, the Supreme Court has time and again held that the scope of Section 138 of the Act is wide and must be interpreted in a liberal manner so as to achieve the object for which the said provision has been enacted.
- With regards to the contention of the Petitioner that blank cheque was issued by the Petitioner for the purpose of security, the HC held that it has absolutely no substance since it is trite law that when a cheque given for the purpose of security is dishonored, Section 138 of the Act will be attracted. The HC then went on to hold that not only the cases of dishonor of cheques on account of insufficiency of funds or exceeding arrangement but the cases involving dishonor of cheques on account of 'payment stopped' and 'account closed' have also been brought within the ambit of the offence under the aforesaid provision. While reiterating this position of the law, the HC laid emphasis on the landmark judgement of the Supreme Court in the case of ***NEPC Micon Ltd & Ors v. Magma Leasing Ltd***[1].
- Moreover, the HC respected the jurisdiction of the Trial Court and held that the contentions of the Petitioner's counsel regarding the civil suit which has been filed by the Petitioner against the Respondent for the recovery of amounts is an issue which could not be looked into at the current stage and is a matter of trial.
- Further, the HC held that a great deal of caution must be exercised in the use of the power conferred on High Courts under Section 482 of the CrPC. Accordingly, the HC held that it could not find any material on record which can be stated to be of sterling and impeccable quality warranting invocation of the jurisdiction of the High Court under Section 482 of the CrPC. Thus, the HC did not find any ground for quashing the criminal complaint filed by the Respondent under Section 138 of the Act, nor any flaw or infirmity in the proceedings pending before the Trial Court.
- In view of the above, the HC declared the prayers to be untenable in law and accordingly, dismissed the Petition and the subsequent Criminal Miscellaneous Application.

HSA
Viewpoint

By way of this judgment, the Delhi High Court has once again reiterated the position of law on admissibility of Section 138 complaints under the Act vis-a-vis a Petition under Section 482 of the CrPC. This judgement will go a long way in expediting and fast forwarding the proceedings under Section 138 of the Act as the Court has not only reiterated the procedure as duly established by law which must be followed in such proceedings, but also clarified on the position of a Petition invoking the inherent special powers of the High Court under Section 482 of the CrPC as to where such a Petition will stand in proceedings under Section 138 of the Act.

Bharat Petroleum Corporation Ltd & Anr v. ATM Constructions Pvt Ltd

Supreme Court of India | 2023 SCC Online SC 1614

Background facts

- The Respondent is presently the absolute owner of the property in dispute. The said property was originally owned by T. Padmanabhan, T. Sethuraman and T. Gopinath. At that time, Burma Shell Oil Storage and Distribution Company of India Ltd had taken the property on lease for a period of 20 years by entering into a lease deed dated January 08, 1958. The said company was the predecessor-in-interest of the Appellant.
- The said property was put to public auction owing to default in repayment of loan availed by the owners after which the Respondent purchased the property. Finally, the lease in favor of the Appellants expired on December 31, 1997.
- Thereafter, the Respondent issued a notice to the Appellants demanding surrender of possession of the said property which was not complied with. Thereafter, the first suit was filed by the Respondent in the year 2006 which was decreed on October 30, 2010.
-
- During the pendency of the first suit, the Appellants sought to invoke Section 9 of the Tamil Nadu City Tenants Protection Act, 1921 claiming the right to purchase the property but failed in that process. In the first suit filed by the Respondent, the prayer was only for seeking possession of the property.
- Further, during the pendency of the first suit, the present suit was filed claiming liquidated damages for a period from January 01, 1998 till December 31, 2019 along with interest and future damages of INR 30,50,000 per month from January 01,2020 onwards till the date of handing over the vacant possession of the suit property.
- It is in the aforesaid suit that the Appellants filed an application for rejection of the plaint under Order VII Rule 11(d) of the Civil Procedure Code (CPC). The application was on the ground that occupation of the property in dispute for which a suit of possession was filed earlier without claiming any damages for use and occupation will not be maintainable in terms of Order II Rule 2 of CPC. The same has been dismissed by the Chennai High Court.

[1] (1999) 4 SCC 253

Issues at hand?

- Whether the Respondent can file a subsequent suit for damages for use and occupation while a prior suit for possession is pending wherein such relief was not claimed.
- Whether the application filed by the Appellants under Order VII Rule 11(d) CPC in the suit maintainable.

Decision of the Court

- The primary issue that stands regarding the maintainability of the subsequent suit is with reference to the cause of action. The first suit was filed by the Respondent for possession, whereas the second suit was filed for damages for the use and occupation of the property after the expiry of the lease period.
- The Supreme Court relied on various cases on similar issues. In the case of ***Ram Karan Singh v. Nakchhad Ahir***[2], the full bench of Allahabad High Court observed that the cause of action for recovery of possession is not necessarily identical with the cause of action for recovery of mesne profits.
- In ***Sadhu Singh v. Pritam Singh***[3], a full bench of Punjab & Haryana High Court dealt with the similar issue of whether Order 2 Rule 2 of CPC bars a suit for mesne profits filed subsequently to a suit for possession of the property because the claim for those accrued mesne profits has not been included earlier. The same was answered in negative by the majority.
- The full bench of Allahabad High Court in Ram Karan Singh's case (supra) with approval in ***Indian Oil Corporation Ltd v. Sudera Realty Pvt Ltd***[4] opining that the cause of action claiming mesne profits accrue from day to day and the cause of action is a continuing one. A suit for possession can be brought within 12 years of the date when the original dispossession took place and the claim of mesne profits can only be brought in respect of profits within 3 years of the institution of the suit and the date of the cause of action for mesne profits would in many cases be not identical with the original date of the cause of action for the recovery of possession.
- The Supreme Court observed in the light of the facts of the case in hand and precedents referred to above, the suit for possession and suit for claiming damages for use and occupation of the property are two different causes of action. There being different considerations for adjudication, the second suit filed by the Respondent claiming damages for the use and occupation of the premises was maintainable. Therefore, the application filed by the Appellants for rejection of plaint was righty dismissed by the courts below. However, the Appellants are well within their rights to raise the issue, if any part of the claim in the suit is time-barred but the entire claim cannot be said to be so.
- Therefore, the Supreme Court did not find any merit in the said appeal and dismissed the same.

HSA
Viewpoint

The Supreme Court has correctly identified that the subsequent suit for claiming mesne profits is maintainable as the cause of action for mesne profits arises out of continued misappropriation of the profits. Further, a suit of possession and a suit for damages for use and occupation of property are two different causes of action as the cause of action for damages suit does not arise until after possession suit was filed. Therefore, the damages suit is not barred under Order II Rule 2 of CPC.

Rajib Biswas & Anr v. Arena Superstructures Pvt Ltd & Ors

National Company Law Appellate Tribunal (NCLAT), Delhi Bench | Comp. App. (AT) (Ins) No. 1488 of 2022 and I.A. No. 4701 of 2022

Background facts

- In this case, the National Company Law Appellate Tribunal (**NCLAT**) grappled with multifaceted issues revolving around the legitimacy of the Appellants' claims in the insolvency resolution process.
- Rajib Biswas and Mr Sunil Dwivedi (**Appellants**) booked units in the project Lotus Arena floated by Arena Superstructures Pvt Ltd (**Respondent/Corporate Debtor**) in Sector 79, Noida. Later, the Appellants approached Uttar Pradesh Real Estate Regulatory Authority (**UP RERA**) for a refund of the amount as the Respondent became insolvent.
- On February 07, 2020, a recovery certificate was issued for an amount of INR 76.53 lakh in favor of one of the Appellants and on February 13, 2020 a recovery certificate was issued for an amount of Rs. 47.46 lakh in favor of the other Appellant. These recovery certificates were issued in favor of the Appellants based on their claims against the corporate debtor, Arena Superstructures Pvt Ltd, seeking reimbursements for their investments made in the real estate project.
- On July 19, 2023, the Resolution Plan was approved by the NCLT, and the Appellants did not challenge the same.

[2] AIR 1931 All 429
[3] ILR (1976) 1 P&H 120
[4] 2022 SCC OnLine SC 1161

- The Appellants filed their claims before the Resolution Professional as Real Estate Allottees. The Resolution Professional accepted the claims of the Appellants. However, the Appellants claimed that they were entitled to the decretal amount and not the amount which has been admitted by the Resolution Professional. Following this, the Appellants applied to the NCLT.
- On October 11, 2022, NCLT rejected the application on the ground that the Appellants filed their claims as Real Estate Allottees who are part of home buyers and have been represented by the authorized representative in the Resolution Plan, who voted in favor of the plan, and now the Appellants cannot ask for a refund separately.
- Aggrieved by the order of NCLT, the Appellants filed an application before the NCLAT. At the heart of the matter was the contention regarding the Appellants' pursuit of a refund beyond the quantum accepted by the Resolution Professional, raising questions about the specificity and validation of their claims within the broader resolution paradigm.
- Central to the Appellants' argument was their claim to be treated as financial creditors, asserting entitlement to a decretal amount within the context of the proceedings. In response, the Respondents' counsel contended that the Resolution Plan had already obtained approval, highlighting the Appellants' lack of challenge against it. Additionally, they deemed the Appellants' application as obsolete given the evolved circumstances of the case.
- The Respondents referenced a specific provision within the Resolution Plan pertaining to refunds, emphasizing that the appellants did not warrant any distinct or preferential treatment over other involved parties. Consequently, the Court's decision was to dismiss the appeal, delineating that the appellants were to be regarded as homebuyers or financial creditors.
- The Court underscored that the Resolution Plan had already accommodated provisions for refunds, rendering the Appellants' separate claim untenable within the existing framework.

Issues at hand?

- Were the Appellants entitled to a separate refund beyond what was acknowledged by the Resolution Professional in the insolvency resolution process?
- Should the Appellants, categorized as real estate allottees, be treated as a distinct group within the larger homebuyer segment for the purpose of refunds during insolvency proceedings?
- Does the acceptance of the Resolution Plan by the authorized representative on behalf of the broader homebuyer collective preclude the Appellants from seeking an independent refund, even if they contested the approved amount?
- How does the Appellants' failure to challenge the approval of the Resolution Plan impact their claims for a separate refund and their positioning within the collective homebuyer category during insolvency proceedings?

Decision of the Tribunal

- The NCLAT rendered a verdict dismissing the Appellants' appeal. The Tribunal affirmed that the Appellants who had filed their claims as Real Estate Allottees were an integral part of the homebuyer collective. Consequently, they were precluded from seeking a separate refund if the authorized representative had already endorsed the Resolution Plan on behalf of the larger homebuyer group.
- The decision rested on the Appellants' failure to challenge the earlier approval of the Resolution Plan and their categorization within the broader homebuyer segment. The judgment emphasized that their claims could not merit distinct treatment concerning refunds within the insolvency resolution process.
- NCLAT dismissed the appeal and held that the Appellants, who have filed their claims as Real Estate Allottees, are considered part of the home buyers. Therefore, if the home buyers have already been represented by an authorized representative who has approved the Resolution Plan, the Appellants cannot ask for a refund separately.
- NCLAT observed that in ***Vishal Chelani & Ors v. Debashis Nanda***[5] it was held that allottees are not to form a separate class and are to be treated the same as other home buyers/financial creditors for a Resolution Plan. The NCLAT further observed that the Appellants had obtained a decree from UP RERA and a provision has already been made in the Resolution Plan for refund in Clause (B3)(c).

HSA
Viewpoint

The NCLAT's verdict brings forth a paradigmatic understanding of the interplay between the rights of Real Estate Allottees and the dynamics within Resolution Plans. The judgment aligns with the evolving jurisprudence around the equitable treatment of various stakeholders in insolvency proceedings, asserting that the collective representation of home buyers holds paramount significance. The ruling consolidates the notion that Real Estate Allottees should be considered part of a larger group in insolvency resolutions, where their individual claims might be superseded by a collective decision ratified through an authorized representative. The Court's decision underscores the importance of uniformity in treating claims within the framework of insolvency resolution. This case sets a precedent emphasizing the need for consistency in handling claims within insolvency proceedings and discouraging attempts to seek separate treatment without legally justifiable grounds.

[5] Civil Appeal No. 3806 of 2023

Bansal Biscuits Pvt Ltd v. The Commissioner of Central Excise and Service Tax, Patna

Customs Excise & Service Tax Appellate Tribunal, Kolkata | Service Tax Appeal No. 75363 of 2016

Background facts

- Bansal Biscuits Pvt Ltd (**Appellant**) is a manufacturer of biscuits and is registered under the Central Excise as well as Service Tax Authorities for paying service tax under reverse charge mechanism. The Appellant paid service tax on reverse charge basis for the Good Transport Agency (**GTA**) services utilized by them.
- Vide Notification No. 25/2012-ST (**exemption notification**) dated June 20, 2012, it was notified that when food stuff is transported, the same would be exempted from payment of service tax towards GTA expenses.
- However, without noticing the exemption notification the Appellant paid service tax towards GTA expenses during the period of July, 2013 to March, 2014 on reverse charge basis. After realizing that they were not required to pay service tax towards GTA expenses as per the exemption notification, the Appellant filed their refund claim for INR. 13,02,317 on September 9, 2015.
- A show cause was issued to the Appellant to explain why their refund claim should not be rejected since the same was time barred as per Section 11B of the Central Excise Act, 1944 (**Act**).
- On October 23,2015, a corrigendum was issued adding additional allegations i.e. the relevant documents towards non-passing of the duty incident to others were not submitted. The Adjudication Authority after following the due process rejected the refund claim under Section 11B of the Act read with Section 83 of Finance Act, 1994.
- Being aggrieved by the decision of the Adjudicating Authority, the Appellant filed an appeal before the Commissioner of Central Excise and Service Tax, Patna (**Commissioner**). However, the Commissioner upheld the decision of the Adjudicating Authority.
- Being aggrieved by the said Order passed by the Commissioner, the Appellant filed the present Appeal before the Tribunal.

Issues at hand?

- Whether biscuits can be classified as 'food stuff' to be eligible for the exemption as per the exemption notification?
- Whether the refund claim can be regarded as time bared as per Section 11B of the Act?

Decision of the Tribunal

- At the outset, the Tribunal stated that the Adjudicating Authority did not reject the refund claim on the grounds that biscuit is not classified as 'food stuff' and stated that the Commissioner also upheld the decision of the of the Adjudicating Authority. The only ground on which the refund claim was rejected was on account of the Application under Section 11(B) being time-barred. Hence in view of the same, the Tribunal held that it was not necessary to deal with the aspect of whether the biscuits qualify as food stuff for being eligible for exemption under the exemption notification.
- The Tribunal also relied on the judgement in the case of ***Commissioner of CGST, Ghaziabad v. Glaxo Smithkline Consumer Healthcare Ltd Co.***[6] where it was held that biscuits in question are edible biscuits and not gold biscuits and hence these biscuits would definitely fall under the category of food stuff.
- The Tribunal relied on the judgement of the Karnataka High Court in the case of ***Commissioner of Central Excise (Appeals), Bangalore v. KVR Construction***[7] as well as the judgements in the cases of ***Venkatraman Guhaprasad v. Commissioner of GST and Central Excise Chennai***[8], ***Parijat Construction v. Commissioner of Central Excise Nashik***[9], ***3E Infotech v. CESTAT Chennai***[10] where it was held that refund claims filed on account of service tax paid by mistake are not governed by the time limit specified under Section 11B of the Act and it is outside the purview of the said Section.

HSA
Viewpoint

This decision reaffirms the principle that Section 11B of the Act shall not be applicable to refund claims where payment of duty or taxes have been made under a mistaken notion. The significance of the judgment is that it removes all ambiguities and makes it clear that there shall be no limitation for filing refund claim where payment of duty or taxes have been made under a mistaken notion. This decision also provides clarity to biscuit manufacturers that biscuits fall under the category of food stuff and are eligible for exemption under the exemption notification.

[6] 2019 (28) G.S.T.L. 224 (Tri-All.)
[7] 2012 (26) STR 195 (Karnataka)
[8] 2020 (42) G.S.T.L. 124 (Tri-Chennai)
[9] 2018 (359) E.L.T. 113 (Bombay)
[10] 2018 (18) G.S.T.L. 410 (Madras)

- The Tribunal further relied on the judgement of the Supreme Court in the case of ***Commissioner v. KVR Construction***[11], whereby the Court upheld the decision of the Karnataka High Court in the case of Central Excise (Appeals), Bangalore v. KVR Construction.
- The Tribunal further relied on the decision in the case of ***Credible Engg. Construction v. Commissioner of Central Tax Hyderabad***[12] whereby it was held that the limitation prescribed under Section 11B of the Excise Act would not be applicable if an amount is paid under a mistaken notion as it was not required to be paid towards any duty/tax.
- The Tribunal stated that the issue of unjust enrichment was initially unaddressed by the Adjudicating Authorities and the Revenue Department did not prefer an appeal with respect to the same before the Commissioner. Both the Adjudicating Authority and the Commissioner passed their decisions; however, the Revenue Department did not contest this specific grievance at that point in time. As the Revenue Department didn't raise this issue through proper appeal before the said Tribunal or at earlier stages, the Tribunal held that it cannot consider the same during the final hearing. Moreover, the Tribunal held that since the provisions of Section 11B of the Act are not applicable to refund cases where tax is paid under mistaken notion as held in the case of Credible Engg. Construction Vs. Commissioner of Central Tax Hyderabad, this means that even the provisions of unjust enrichment under Section 11B of the Act shall not be applicable.
- Hence, in view of the above the Tribunal allowed the appeal.

Azizur Rehman & Gulam Rasool v. Radio Restaurant

Bombay High Court | Commercial Appeal No. 18 of 2023 in Commercial Arbitration Petition No. 1286 of 2019

Background facts

- The Appellants, sons of Mr. Gulam Rasool Jamal Sheru, were a partner in a Mumbai restaurant operated by a firm which was constituted under the First Deed of Partnership dated November 07, 1960. The partnership shares were periodically revised vide various Deeds of Partnership and in the Fourth Deed of Partnership dated March 15, 1975, Mr. Sheru's share was reduced to 12%. A Conducting Agreement was also executed with Mr. Sheru managing the business until April 1, 1992. Subsequently, the Firm resumed autonomous operation, and the Fifth Deed of Partnership dated July 10, 1992 maintained Mr. Sheru's 12% share and stipulated that in the event of a partner's death, the surviving partners could continue the business with or without inducting the heirs of the deceased partner.
- Upon Mr. Sheru's death in August 2002, a dispute arose between the surviving partners and the Appellants. Differing accounts of post-demise events, business continuity, and restaurant premises possession led to conflicting claims. The Firm filed a suit in June 2003, alleging unauthorized entry and damage to the restaurant premises by the Appellants. By way of the Suit, the Firm sought an injunction restraining the Appellants from entering upon and/or remaining and/or continuing to remain upon the restaurant premises and further restraining them from dealing with or damaging the restaurant premises or part thereof in any manner. The Bombay High Court dismissed the Notice of Motion on August 05, 2005 due to a lack of evidence of the Firm's possession of the premises.
- In 2006, the Firm filed a second suit to regain possession of the premises and claimed mesne profits against the Appellants. Disputes were then referred to arbitration by a consent Order dated September 12, 2006, resulting in an Award by the Arbitral Tribunal thereby directing the Appellants to provide peaceful and vacant possession of the premises to the Firm and pay compensation for wrongful occupation. The Appellants challenged the Award through a Commercial Arbitration Petition under Section 34 of the Arbitration and Conciliation Act, 1996 (**Act**) which was dismissed in the impugned order.

Issue at hand?

- Can an Arbitral Award be challenged in appeal on entirely new grounds which were not taken under Section 34 Of the Arbitration and Conciliation Act?

Decision of the Court

- At the outset, the High Court examined the provisions of Section 37 of the Act. It was remarked that an appeal is a creation of statute, and the scope of a statutory appeal has to be found out within the contours of the language it is couched in. Hence a plain reading of Section 37 (1)(c) leaves no manner of doubt that it is only the order passed under Section 34 which is appealable

[11] 2018 (14) G.S.T.L. J70 (SC)
[12] Final Order No. A/30082/2022

and nothing else. The High Court stated that that the scope of appeal under Section 37 is one which is extremely limited and narrow and relied upon the decision of ***UHL Power Company Limited Vs. State of Himachal Pradesh***[13] in that context.

- The High Court held that Appellants' entire challenge in the present appeal was only to the Arbitral Award. Thus, the impugned Order in fact remained entirely unassailed in the present appeal. Hence, it was held that the appeal must necessarily fail on this ground alone.
- The High Court observed that the Appellants presented entirely new grounds in their appeal, which were not raised before the Tribunal or the Court under Section 34 of the Act. It ruled that contentions not previously brought before the Court under Section 34 of the Act cannot be introduced in an appeal. This approach, the Court held, not only contradicts established legal principles but also disrupts the entire framework of the Act. In support of the same, the High Court relied upon the decision of the Supreme Court in the matter of ***MMTC Ltd v. Vedanta Ltd***[14].
- Considering the challenge on merits, the High Court held that the present petition was devoid of any worthiness. The assertion that the Arbitral Award was patently illegal, perverse, arbitrary, and whimsical was considered untenable as the Appellants failed to provide evidence of requesting the Tribunal to address specific issues.
- The second challenge, claiming a lack of reference to the Deeds of Partnership and Conducting Agreement in the Arbitral Award, was rejected. The High Court pointed out that the Appellants had admitted and relied on these documents, making their absence from the Award irrelevant.
- The third ground, alleging a lack of evidence regarding the Deeds of Partnership, was dismissed, as the Appellants had admitted these documents, and the contention was not raised before the Arbitral Tribunal or the High Court. The fourth ground, asserting that some Deeds of Partnership were not registered, was deemed irrelevant, as the Registration Act did not mandate registration for such documents, and the objection was not raised before.
- The Court also highlighted that objections pertaining to insufficient payment of stamp duty should have been raised earlier, emphasizing that the Deeds of Partnership had sufficient stamp duty paid thereon as per the provisions of the Bombay Stamp Act, 1958. Consequently, the Court concluded that this ground had no merit in challenging the Arbitral Award.
- Lastly, the submission that the second suit was barred was rejected, as the Court found distinct and separate causes of action in both suits.
- As a result, the High Court dismissed the appeal and directed the Court Receiver, High Court, Bombay to handover possession of the restaurant premises to Respondent No. 1.

HSA
Viewpoint

The jurisdiction conferred on Courts under Section 34 of the Arbitration and Conciliation Act, 1996 is quite narrow in the first place and, in turn, the scope of interference by a Court in an appeal under Section 37 becomes narrower. We believe that the Bombay High Court has rightly held that an appeal under Section 37 cannot be on fresh grounds. In the instant case, the Appellants did not assail the Order passed under Section 34, but rather brought forth new grounds to assail the Arbitral award. In our view, the same should not be allowed as it can upset the scheme laid down in the Arbitration and Conciliation Act, 1996.

Shakeel Ahmed v. Syed Akhlaq Hussain

Supreme Court of India I 2023 INSC 1016

Background facts

- The Appellant, Shakeel Ahmed, challenged the decision of the High Court, which affirmed the Trial Court's decree for possession and mesne profits in favor of the Respondent, Syed Akhlaq Hussain. The Appellant claimed ownership of the property based on an oral gift from his brother, while the Respondent relied on various documents including an Agreement to sell, a Power of Attorney, an Affidavit, and a Will. The Trial Court decided all issues against the Appellant except one, granting possession to the Respondent. The High Court, while acknowledging that the documents were not admissible or enforceable under the law, upheld the decree of possession on the ground that the Respondent filed the suit as an attorney for the property owner, who did not object to the possession claim.
- The Appellant argued that the unregistered documents could not confer ownership rights, while the Respondent claimed that the customary documents granted him full title to the property. In this instance, the Respondent initiated legal action against the Appellant, laying claim to defendant status and seeking mesne profits pertaining to a specific property. Foundational to this lawsuit were a Power of Attorney, a Sale Agreement, an Affidavit, and a Will executed in favor of the Respondent. Controversy arose as the contested property ostensibly belonged to the Appellant, who contended ownership by virtue of it being gifted by his brother, Laiq Ahmed.
- Despite the Appellant's appeal to the High Court subsequent to the Respondent being awarded possession and mesne profits, the appeal was negated. Notably, although the High Court acknowledged the non-registration of supporting documents, it upheld the decree of possession, citing the Respondent's representation as an Attorney for Laiq Ahmed, coupled with Laiq Ahmed's lack of objection to the possession claim.

[13] (2022) 4 SCC 116
[14] 2019 SCC Online SC 220

- Following this, the Appellant approached the Supreme Court, arguing that the lower courts erred in decreeing possession and mesne profits on the basis of unregistered documents, a stance fortified by established legal precedent. The Apex Court reiterated the immutable principle that rights, titles, or interests in immovable property cannot be substantiated without registered documents. Consequently, the Respondent's pursuit of possession and mesne profits against the Appellant, who indisputably possessed the property found no legal footing due to reliance on unregistered documents.
- The Supreme Court did not agree with the view taken by the High Court and allowed the appeal while dismissing the suit and cited recent judicial pronouncements such as Ameer Minhaj v. Deirdre Elizabeth (Wright) Issar (2018 7 SCC 639), Balram Singh v. Kelo Devi Civil Appeal No. 6733 of 2022, and Paul Rubber Industries Pvt Ltd v. Amit Chand Mitra in SLP (C) No. 15774 of 2022. The Apex Court diverged from the High Court's interpretation and allowed the Appellant's appeal while nullifying the suit.
- The Court further explicated that if the Respondent sought the eviction of the Appellant, they should have pursued legal action as an authorized representative of the true owner or landlord. As the litigation did not adhere to these requisites, the Apex Court disapproved of the reasoning employed by the lower Court in the contested order. The Court concluded that the Respondent could not maintain the suit for possession and mesne profits, and the suit was dismissed.

Issues at hand?

- Whether the transfer of title for immovable properties can occur through unregistered documents like an Agreement to Sell or a General Power of Attorney?
- Does non-registration render documents such as the Power of Attorney, Sale Agreement, Affidavit, and Will ineffective in establishing property rights as per Indian property law?
- How pivotal are Sections 17 and 49 of the Registration Act and Section 54 of the Transfer of Property Act, 1882 in mandating the necessity of registered documents for property transfers?
- In light of the absence of registration, can the decree for possession and mesne profits granted to the Respondent based on unregistered documents stand legally?

Decision of the Court

- The Court's judgment in the case emphasizes that the transfer of title for immovable properties cannot occur through unregistered documents like an Agreement to Sell or a General Power of Attorney. It highlights the significance of the Registration Act, 1908, stating that even if such documents were registered, they do not confer title over the property. The Court established that the Respondent, who failed to register the documents, couldn't maintain a suit for possession and mesne profits against the Appellant, who was in possession of the property. The bench had dismissed the contention that the ruling in ***Suraj Lamps & Industries Pvt Ltd v. State of Haryana and Anr***[15], which established that unregistered documents cannot be used to transfer title, is only applicable going forward.
- The requirement of compulsory registration and its effect on non-registration are rooted in statutes, specifically the Registration Act and the Transfer of Property Act. The Court sets aside the impugned judgment and dismisses the suit, emphasizing the settled legal position that unregistered documents do not confer title on immovable property.

HSA
Viewpoint

The judgment is commendable since it reinforces the principle that the transfer of title for immovable properties cannot occur through an unregistered Agreement to Sell or General Power of Attorney. The Court highlights the significance of the Registration Act, 1908, stating that a document requiring compulsory registration does not confer any legally enforceable right even if unregistered. Even if such documents are registered, they alone do not grant title; at most, they allow the claim for specific performance. Furthermore, this judgment dismisses the argument that the embargo on registration of documents could confer title based on unregistered documents, and strengthens the legal framework by affirming the necessity of registration for valid property transactions and dismissing claims based on unregistered documents.

Sheth Developers Pvt Ltd and Anr v. Municipal Corporation of The City of Thane & Ors

Bombay High Court I 2023 WP 12362

Background facts

- In the intricate narrative of Sheth Developers' legal tussle with the Thane Municipal Corporation (**TMC**), the story begins with a substantial acquisition. Back in 2003, Sheth Developers secured extensive land rights spanning acres from Voltas Ltd and had abided by the terms and conditions of the Buy-Back Policy (**BBP**) initiated by the TMC itself.
- **Timeline of events:**
  - **October 1, 2003:** Sheth Developers acquired development rights over 1,15,018 sq. mts. of land from Voltas Ltd
  - **May 2, 2016:** The Maharashtra Government introduced an 'Accommodation Reservation Policy' designed to shift the responsibility of developing reserved plots to private

[15] SLP C. No. 13917 of 2009

landowners or developers in exchange for specific incentives. This Policy shift marked a pivotal moment in the state's development dynamics, inviting private stakeholders to participate actively in urban development initiatives.

- **July 2023:** TMC declined the builder's request for additional developable space according to a 2020 Regulation, citing the suspension of the BBP. This suspension stemmed from an inquiry into its legality raised after a query in the State legislative assembly.
- **November 1, 2023:** The Bombay High Court, in response to a plea by Sheth Developers, criticized the TMC's decision as manifestly arbitrary and highlighted established legal principles against unreasonableness and proportionality in administrative actions. The Court emphasized that TMC's rejection failed to meet the standard of non-arbitrariness mandated by Article 14 of the Constitution.

- This abrupt refusal set the stage for a dispute revolving around the TMC's suspension of the BBP and subsequent refusal to grant development permissions to the builder. Sheth Developers argued that they had fulfilled their obligations and financial commitments under the Policy, expecting the TMC to honor its assurances.

Issues at hand?

- Was the TMC's refusal to grant additional development space to Sheth Developers justified based on the suspended BBP?
- Did the TMC's grounds for refusal adequately justify denying further development permissions to Sheth Developers, considering their compliance and financial contributions under the BBP?
- How significant is the role of honoring commitments made under administrative policies in public-private partnerships, and how does this impact the legitimacy of administrative decisions?

Decision of the Court

- The Bombay High Court, presided over by Justices Gautam Patel and Kamal Khata, rendered a critical decision in this case. The Court questioned TMC's justification for rejecting the builder's application solely based on the Policy's suspension, emphasizing the builder's compliance and the TMC's failure to fulfil its commitments. The Court criticized the TMC's rejection as manifestly arbitrary, thereby invalidating the corporation's stance.
- The Court noted that TMC's actions were manifestly arbitrary and strongly emphasized upon established legal principles, highlighting fairness, and non-arbitrariness in administrative actions. Their verdict extensively reviewed the builder's compliance with and financial contributions under the BBP, casting doubt on the TMC's sole basis for refusal.
- The High Court invalidated the TMC's decision, asserting that it contradicted established legal principles. The Court highlighted the TMC's failure to adhere to principles of fairness and non-arbitrariness mandated by Article 14 of the Constitution. Despite the inquiry into the Policy, the Court emphasized the builder's compliance and financial commitments made under the Policy, questioning TMC's justification for refusing permission solely based on the Policy's suspension.

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Viewpoint

This ruling sets a significant precedent for the honoring of commitments made by administrative bodies to private entities. It underscores the importance of upholding assurances and agreements, emphasizing the legal weight of promises made by governing bodies. The ruling accentuates the role of administrative fairness in decision-making processes involving public-private partnerships. By questioning the arbitrary denial of development permissions based solely on Policy suspension, the Court emphasizes the need for transparency, reasonability, and non-arbitrariness in administrative actions. Overall, this legal precedent could pave the way for a more balanced and transparent relationship between governing bodies and private entities, setting standards for adherence to commitments, administrative fairness, and the legal significance of legitimate expectations in public-private partnerships.

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CONTACT US

www.hsalegal.com

mail@hsalegal.com

HSA Advocates

PAN INDIA PRESENCE

New Delhi
Email: newdelhi@hsalegal.com

Mumbai
Email: mumbai@hsalegal.com

Bengaluru
Email: bengaluru@hsalegal.com

Kolkata
Email: kolkata@hsalegal.com