

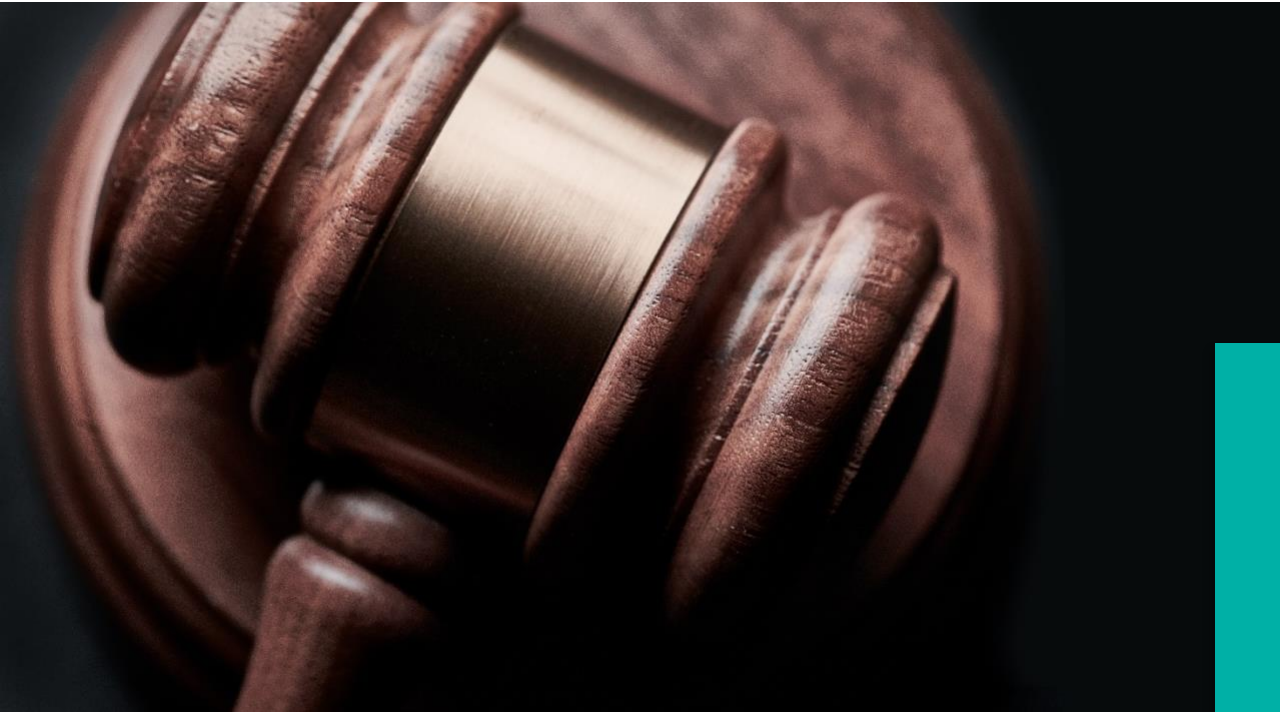


Dispute Resolution & Arbitration

Monthly Update
March 2024

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DISPUTE RESOLUTION AND ARBITRATION UPDATE



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Asma Lateef & Anr v. Shabbir Ahmad & Ors

Supreme Court of India | Civil Appeal No. 9695 of 2013

Background facts

- Asma Lateef and another (**Appellants**) instituted a Civil Suit under Section 38 of the Specific Relief Act, 1963 (**Specific Relief Act**) praying for a permanent injunction against Shabbir Ahmad and others (**Respondents**) from interfering with the Appellants' peaceful possession of the suit property.
- Thereafter, one of the Respondents i.e., Kazmi filed his written statement before the Trial Court contending that the Suit was not maintainable on the ground that it was barred in view of Section 41(h) of the Specific Relief Act. There was no written statement filed on behalf of the other 2 Respondents. Subsequently, Respondent Kazmi passed away and thus, the suit against him stood dismissed as abated.
- The Appellants thereafter moved an application before the Trial Court under Order VIII Rule 5 and 10 of the Code of Civil Procedure, 1908 (**CPC**) for pronouncement of judgment against the remaining 2 Respondents, which was allowed by the Trial Court by its order dated August 5, 1991.
- The Appellants then filed an Execution Application before the Executing Court and prayed for interim reliefs to restrain the Respondents from interfering with the suit property, which was granted vide Interim order dated January 16, 1998. Consequently, the Respondents filed objections under Section 47 of CPC submitting that the order dated August 5, 1991, was neither a 'judgement' nor a 'decree', and therefore was not capable of execution. The said objections were duly allowed by the Executing Court, resulting in the dismissal of the Execution Application.
- Thereafter, the Appellants filed a Revision Application against the order of dismissal by the Execution Court. The same was considered and the Revisional Court found merit in it, thereby directing the Execution Court to proceed with the execution of the decree.
- Being aggrieved by the order passed by the Revisional Court, the Respondents approached the Allahabad High Court (**HC**) under Article 227 of the Constitution of India. Vide judgment dated February 04, 2011, the HC quashed the order passed by the Revisional Court and relegated the parties to the remedy of having their rights in respect of the suit property adjudicated by the appropriate forum.

- Being aggrieved by the judgment dated February 04, 2011, passed by the HC, the Appellants filed the present Special Leave Petition before the Supreme Court (SC).

Issue at hand?

- Whether the order dated August 5, 1991, suffered from a jurisdictional error so grave that the decree drawn up subsequently is incapable of execution by the Executing Court and an objection that it is inexecutable was available to be raised under Section 47 of the CPC by the Respondents?

Decision of the Court

- At the outset, the SC extensively analyzed the scheme of Order VIII Rule 10 of the CPC and the scope and nature of Section 47 of the CPC. The SC observed the procedure as laid down in Order VIII Rule 10 of the CPC, wherein if a party fails to present a written statement within the stipulated time, the Court may pronounce the judgment against such party, or make such order in relation to the suit as it deems fit. Upon pronouncement of such judgment, a decree shall subsequently be drawn up. The SC held that the same is permissive in nature and not a mandatory provision. The SC placed reliance upon the case of *Balraj Taneja v. Sunil Madan*¹, wherein it was held that a Court need not pass a mechanical judgment merely relying on the plaint when no written statement is forthcoming from the respondent.
- The SC noted that the power under Order VIII Rule 10 of the CPC ought to be invoked with care, caution, and circumspection, and only in cases where none of several defendants have filed their written statements. Moreover, if the plaint itself consists of disputed questions of fact, it held that it would be advisable to avoid passing a judgment in favor of such plaintiff without due consideration to the evidence adduced and submissions made.
- Thereafter, the SC noted that Section 47 of the CPC mandates that an Executing Court must determine all questions arising between parties to a suit. The SC referred to the decision in *Vasudev Dhanjibai Modi v. Rajabhai Abdul Rehman*² wherein it was held that an Executing Court can dismiss an execution application if the decree put to execution is unmistakably found to suffer from an inherent lack of jurisdiction, rendering it a nullity in the eyes of law.
- Further, the SC relied upon the Calcutta High Court's decision in *Hirday Nath Roy v. Ramachandra Barna Sarma*³ wherein the Court opined as to what is meant by 'jurisdiction', 'lack of jurisdiction' and 'error in the exercise of jurisdiction'. The SC then noted that it is no longer res integra that a Court must not only have the jurisdiction in respect of the subject matter of the dispute, but also the jurisdiction to grant relief that is sought for.
- The SC further observed that at the stage of considering the question of grant of interim relief, if the opposing party raises a point of maintainability thereof, the Court ought to record at least a prima facie satisfaction that the suit before it is maintainable and not barred by law.
- In view of the above, the SC, while upholding the order of the HC, held that the Trial Court had no authority to decree the suit against the Respondent under Order VIII Rule 10, CPC for non-submission of their written statements.

HSA Viewpoint

Through this judgment, the SC has held that Order VIII Rule 10 of CPC is not a mandatory provision, and a Court is not bound to pass a judgment in favor of the plaintiff merely because the defendant has failed or neglected to file his written statement. The Court may only proceed to pass a judgment/decree against the defendant, who has not filed a written statement on being satisfied that none of the several defendants have filed their written statement(s) and there is no fact which needs to be proved on account of deemed admission. This judgment underscores that mere non-filing of a written statement by the defendant does not automatically entitle a plaintiff to have a decree drawn up in its favor, without proving its own case through leading evidence. This ruling reinforces the nuanced application of procedural rules for a fair and just legal outcome.

Shri Dharmesh Jethanand Lohana v. State Bank of India & Shri Manishbhai Mahendrabhai Patel

Gujarat State Real Estate Regulatory Authority | Complaint No.
CMP/A/ONLINE/VADODARA/14072022/00066

Background facts

- Manishbhai Mahendrabhai Patel (**Opponent No. 2**) floated a scheme in respect of a property in Vadodara and had the same registered with the RERA Authority. As per the declaration in the scheme, the project was to be completed by March 31, 2028.
- Dharmesh Jethanand Lohana (**Complainant**) had booked 4 shops along with Opponent No. 2 as per the said scheme. Thereafter, an Agreement for Sale and an Allotment Letter was provided to the Complainant by Opponent No. 2, making the Complainant a co-allottee.
- The Complainant paid INR 70,53,700 of the total INR 86,00,000 and affirmed to pay the remainder. It was later discovered by the Complainant that the State Bank of India (**Opponent No. 1**) had taken symbolic possession of the assets of the promoter which included the Complainant's shops due to the developer's failure to repay the loan under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (**SARFAESI Act**).

¹ (1999) 8 SCC 396

² (1970) 1 SCC 670

³ 1920 SCC OnLine Cal 85

- The Complainant became anxious that the bank may sell or assign the 4 shops by way of auction and contended that the right to get a registered conveyance deed and possession of the 4 shops under Section 17(1) read with Section 19(3) of the Real Estate (Regulation and Development) Act, 2016 (**RERA Act**) would be prejudiced if the bank is able to auction the properties. Therefore, the Complainant sought a direction against Opponent No.1 under Section 37 of the RERA Act.

Issues at hand?

- Whether RERA provisions prevail over SARFAESI Act provisions?
- Whether RERA Authority has jurisdiction to entertain complaints by an aggrieved person against a bank as a secured creditor?

Decision of the Authority

- The Gujarat RERA Authority observed that the Complainant is willing to pay the remaining 10% consideration, thus entitling the Complainant to get the shops booked along with Opponent No. 2. The Court relied on the Supreme Court's judgment in *Bikram Chatterji v. Union of India*⁴, wherein it was held that in the event of a direct conflict between the RERA and SARFAESI Act, the provisions contained in RERA would prevail as it came into force later than the SARFAESI Act.
- The Gujarat RERA Authority also relied on *Union Bank of India v. Rajasthan Real Estate Regulatory Authority & Ors*⁵ and held that the RERA Authority has the jurisdiction to entertain a complaint by an aggrieved person against the bank as a secured creditor in case the bank takes recourse to any of the provisions contained in Section 13(4) of the SARFAESI Act.

HSA Viewpoint

This decision clarifies that the RERA provisions take precedence over SARFAESI provisions because the latter came into force subsequently, and that the RERA Authority has jurisdiction to hear complaints by aggrieved persons against a bank as a secured creditor if the bank invokes any of the provisions outlined in the Section 13(4) of the SARFAESI Act.

Gitadevi Ramprakash Podar v. Pragnesh Narayan Podar & Ors

Bombay High Court | Miscellaneous Petition (L) No. 24140 of 2023 in Miscellaneous Petition No. 357 of 2023

Background facts

- Gitadevi Ramprakash Podar (**Petitioner**), the mother of the Narayan Tejpal Podar (**Deceased**), sought revocation of a legal heirship certificate which was granted to the legal heirs of the deceased (**Respondents**). The Petitioner claimed herself to be the biological mother of the deceased and on that basis claimed 1/4th share in the deceased's estate.
- It was the Petitioner's case that a Suit seeking declaration that the deceased was her son and challenging the deceased's alleged adoption by the Petitioner's husband's brother was already filed by her in Court and the Respondents (Defendants therein) were put to notice and appeared for the same.
- Therefore, as per the Petitioner, the Respondents (the wife and children of the deceased) had knowledge of such a suit but chose to suppress such crucial information during the Court proceedings for the Legal Heirship Certificate (**LHC**), which led to the dispensation of proclamation and issuance of the LHC.

Issue at hand?

- Whether a legal heirship certificate can be revoked due to a separate pending suit for declaration?

Decision of the Court

- The Court observed that the deceased's son while seeking dispensation of proclamation in proceedings for the LHC was not bound to disclose regarding the Petitioner's suit as the same was not decided.
- The Court was of the view that since the Petitioner's claim of being a legal heir was still pending, her claim to be a legal heir for challenging the LHC would not stand.
- The Court dismissed the Petition seeking revocation of the LHC granted to the wife and children of the deceased and observed that if contentions raised by the Petitioners are accepted, any stranger based on some relation with the deceased could file a declaration suit and thereafter seek revocation of the legal heirship certificate on the basis that a proclamation ought to have been issued, merely because such a suit for declaration was pending.
- The Court further clarified that issuing a LHC only results in grant of the right to manage the property of the deceased and does not determine the rights of a third party.

HSA Viewpoint

Revocation for grant of a LHC cannot be sought from the Court basis a pending suit for declaration. This is because declaration sought the Petitioner to claim status as one of the legal heirs of the deceased remains inchoate and not crystallized till actually decided by the Court.

⁴ MANU/SC/1484/2022

⁵ Petition for Special Leave to Appeal (C) Nos. 1861-1871/2022

Nilesh Shejwal v. Agrowon Agrotech Industries Pvt Ltd

Bombay High Court | Commercial Arbitration Petition No. 14 of 2022

Background facts

- Mr. Nilesh Shejwal (**Petitioner**) along with his brother Mr. Naresh Shejwal founded a company named Krushking Agrotech Industries Pvt Ltd for providing services in the field of software and software-enabled applications for farmers, villagers, and media.
- The Petitioner entered into a Share Purchase Agreement dated August 23, 2019 with Mr. Abhijit Pawar, the Managing Director of Sakal Group, who offered to buy out the company Krushking Agrotech Industries Pvt Ltd. Subsequently, the name of the company was changed to Agrowon Agrotech Industries Pvt Ltd (**Respondent**).
- Furthermore, the Petitioner came to be appointed as the Chief Executive Officer (CEO) of the Respondent vide Appointment Letter dated August 23, 2019 (**Appointment Letter**), which detailed various terms and conditions for appointment of the Petitioner.
- Additionally, an Employment Agreement dated August 23, 2019 was executed in Pune pursuant to appointment of the Petitioner as the CEO of the Respondent on separate terms contained in the Appointment Letter. The Petitioner was involved in day-to-day business of the Respondent.
- The Petitioner was restrained and not allowed to attend office on October 22, 2021, on the pretext of some irregularities found in the functioning of the Respondent. The Petitioner was also forcibly deprived of his mobile phone and the password of his savings account was changed. In view of the above, the Petitioner lodged a complaint before the appropriate authority.
- The Petitioner claimed that he was forced to give his resignation as the audit of the books of accounts etc. of the Respondent were under process. However, as soon as the audit was completed, the Petitioner withdrew his resignation vide email dated February 15, 2022, and requested for release of his salary as well as permission to serve for the remaining term of his employment.
- Pursuant to the above, Respondent issued a notice dated February 16, 2022 (**Termination Notice**) whereby they terminated the employment of the Petitioner on the grounds of an audit report and thereby finding Petitioner guilty of misappropriation of funds, misuse of the company brand, and breach of trust.
- Additionally, a criminal complaint was lodged against the Petitioner invoking Sections 409, 420 and 477 of the Indian Penal Code, 1860.
- A notice was sent by Petitioner to Respondent demanding revocation of the Termination Notice as well as payment of INR 1,08,00,000 towards salary and variable. The said notice was replied by the Respondent denying the allegation of illegal termination as well as rejecting the claim for salary and variable.
- The Petitioner vide notice dated May 10, 2022, invoked arbitration under Clause 19 of the Employment Agreement challenging the Termination Notice. The invocation was contested by the Respondent that the issue is not arbitrable, and no assent was accorded for appointment of Arbitrator.
- Hence the Petitioner filed the present Petition for appointment of Arbitrator.

Issues at hand?

- Whether the dispute arising out of the Employment Agreement, specifically regarding the termination of the Petitioner and claims for salary/remuneration, is arbitrable despite allegations of fraud and ongoing criminal investigation against the Petitioner's actions?
- Whether pendency of criminal proceedings vitiate the arbitration clause in the Employment Agreement or render the dispute non-arbitrable?

Decision of the Court

- At the outset, the Court held that it is a settled position of law that existence of a valid arbitration clause generally mandates referral to arbitration unless the arbitration agreement is found to be invalid. Further, the Court also held that certain categories of disputes which are public in nature are not capable of adjudication through arbitration.
- The Court relied on the judgement of the Supreme Court in the case of ***A Ayyasamy v. Paramasivam & Ors***⁶ that laid down a twin test for determining whether a dispute is arbitrable, which pertains to (a) whether the plea of fraud renders the arbitration agreement void, and (b) whether the fraud allegations concern internal party affairs with no public implications? Based on

⁶ (2016) 10 SCC 386

the said judgment the Court held that disputes relating right in rem i.e. rights exercisable against world at large, are not arbitrable.

- The Court relied on the judgement of the Supreme Court in the case of ***Vidya Drolia v. Durga Trading Corporation***⁷ and highlighted the broad category of disputes that are not arbitrable i.e. penal offences visited with criminal sanction, offences pertaining to bribery/corruption, matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, grant of probate etc.
- The Court referred to the view taken in the case of ***NN Global Mercantile Pvt Ltd v. Indo Unique Flame Ltd***⁸ regarding fraud not being arbitrable due to voluminous and extensive evidence was an archaic view, since in contemporary arbitration practice, arbitral tribunals are as it is required to traverse through volume of material in various kinds of disputes. Further clarifying that matters involving criminal aspects of fraud, forgery or fabrication, which would be resulted with penal consequences and criminal sanctions are not arbitrable and can be adjudicated by Courts only.
- The Court held that the Petitioner invoked arbitration being aggrieved by termination of services stating that termination is clearly contradictory to the Employment Agreement and the claim of the Petitioner to continue service is a dispute which arise out of the Employment Agreement and hence the dispute can be referred to arbitration. Further the Court held that filing of criminal case does not make a dispute that has arisen between the Petitioner and the Respondent non arbitrable.
- The Court held that the argument of the Respondent's counsel that the Respondent will have to disclose its stand upon the charges levelled against the Petitioner in the criminal proceeding during the arbitration is not a valid ground to decline arbitration limited to the Employment Agreement. Further, the Court held that it is not the case of the Respondent where they are alleging that the entire arbitration agreement itself is being vitiated on the account of fraud and hence cannot be referred to arbitration.
- Hence in view of the above the Court appointed Advocate Mr. Sarang Aradhya as the Sole Arbitrator for adjudicating the disputes.

HSA

Viewpoint

This decision reaffirms the principle that the disputes involving fraud cannot be non-arbitrable only on the ground of complexity and voluminous evidence that will be lead in arbitration, as Arbitral Tribunals routinely handle voluminous evidence in contemporary arbitration practice. The significance of the judgment is that it removes all ambiguities and makes it clear that criminal aspects of fraud, forgery or fabrication can only be adjudicated by Courts and cannot be referred to arbitration. This decision provides clarity that a dispute arising out of an agreement can be referred to arbitration provided the entire arbitration agreement is not initiated by fraud.

Arif Azim Co Ltd v. Aptech Ltd

Supreme Court of India | Arbitration Petition No. 29 of 2023

Background facts

- Arif Azim Co Ltd (**Petitioner**), an Afghanistan-based company in the business of providing educational training in computers, information technology, etc., entered into 3 franchise Agreements (**Agreements**) with Aptech Ltd (**Respondent**), a Mumbai based company providing similar services as the Petitioner.
- These Agreements granted the Petitioner a non-exclusive license by the Respondent to provide training services in computer education, information technology, English language, etc. under the Respondent's trade names.
- After the Agreements were signed, the Respondent submitted a proposal to the Indian Council for Cultural Relations (**ICCR**) for a short-term course which was subsequently accepted. The Petitioner executed this course at its centre in Kabul, which was certified by the Embassy of India in Kabul.
- Subsequently, disputes arose between the parties regarding royalty fees and the renewal of Agreements. The Respondent issued a recovery notice in 2018 for non-payment of royalties, leading to email exchanges between the parties regarding outstanding payments, franchise renewal, and disagreements over royalty percentages.
- Amidst these disputes, the Petitioner executed the ICCR course, but disagreements over the amount received from ICCR led to a halt in discussions about payment. In 2021, the Petitioner raised the issue of non-payment through a legal Notice and later initiated pre-institution mediation, which was unsuccessful.
- Subsequently, the Petitioner invoked Arbitration, demanding payment. The Respondent denied the claims, asserting the mandatory mediation requirement under the Commercial Courts Act, 2015 and challenging its connection to the Agreements. Furthermore, the Respondent also claimed that the arbitration was barred by limitation. Afterwards in 2023, the Petitioner filed the instant Petition before the Supreme Court (**SC**) after the Respondent failed to nominate an arbitrator as agreed upon in response to a notice of arbitration.

⁷ (2021) 2 SCC 1

⁸ 2021 SC OnLine SC 13

Issues at hand?

- Whether the Limitation Act, 1963 (**Limitation Act**) is applicable to an application for appointment of arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996 (**Act**)?
- Whether the Court may refuse to make a reference under Section 11 of the Act where the claims are ex-facie and hopelessly time-barred?

Decision of the Court

- The Court perused Section 11(6) of the Act, noting that it imposes no time limit for filing an application for appointment of an arbitrator. However, it was observed that the Limitation Act applies to arbitrations as it does to Court proceedings, and none of the articles in its schedule prescribes a time period for such applications.
- Thus, applications under Section 11(6) would fall under Article 137 of the Limitation Act, the residual provision. The Court opined that the limitation period for filing such an application would commence once a valid notice invoking arbitration is sent by the applicant, and there has been a failure or refusal on the other party's part to comply with the requirements in such notice. This limitation is categorized as an admissibility issue, not a jurisdictional one.
- In relation to the same, the Court reached the view that while considering the issue of limitation in relation to a Petition under Section 11(6) of the Act, the courts should satisfy themselves on 2 aspects by employing a 2-pronged test:
 - Whether the Petition under Section 11(6) of the Act is barred by limitation?
 - Whether the claims sought to be arbitrated are ex-facie dead claims and are thus barred by limitation on the date of commencement of arbitration proceedings?

If either of these issues are answered against the party seeking referral of disputes to arbitration, the Court may refuse to appoint an arbitral tribunal.

- Accordingly, Court emphasized the importance of deciding limitation at the pre-reference stage to prevent a party from being dragged through a long and expensive arbitration process. It was noted that the notice invoking arbitration was received within the 3-year period from the date of the cause of action, so the claims sought to be raised could not be considered dead or time-barred at the commencement of arbitration.
- Additionally, the Court urged Parliament to consider amending the Act to prescribe a specific limitation period for applications under Section 11(6), considering the spirit of the Act which aims for expeditious dispute resolution.
- The Court allowed the Appeal, highlighting the unduly long 3-year period for filing such applications. In closing, it was noted that various amendments have been made over the years to ensure expeditious arbitration proceedings, and the Court emphasized the importance of setting a specific limitation period for such applications.

HSA Viewpoint

In our opinion, the judgment of the Supreme Court is commendable for the detailed examination of the disputed legal point concerning the time limitation for applications under Section 11(6) of the Act. The Supreme Court's proactive suggestion for Parliament to amend the Act reflects a commitment to long-term resolution and the enhancement of the arbitration process, aligning with the Act's aim for timely dispute resolution..

High Court Bar Association, Allahabad v. State of UP & Ors

Supreme Court of India | Criminal Appeal No. 3589 of 2023

Background facts

- In 2018, a 3-judge bench of the Supreme Court of India (SC) held in the case of ***Asian Resurfacing of Road Agency Pvt Ltd & Anr v. CBI***⁹ (**Asian Resurfacing**), that stay in civil/criminal proceedings would not be granted beyond a period of 6 months, and the same can be extended only in exceptional cases by a speaking order for extension of such stay.
- Consequently, several trials that were on stay automatically came back without notice, thereby burdening not only the litigants, but also the High Courts as well. In December 2023, another 3-judge bench of the SC, led by the Chief Justice D.Y. Chandrachud (**CJI**), while considering an Appeal filed by the High Court Bar Association Allahabad based on a Certificate of Appeal granted by the Allahabad High Court, expressed reservations about the ruling in Asian Resurfacing.
- The 3-judge bench of the Court observed that the automatic vacation of stay can result in miscarriage of justice in some cases.
- Accordingly, the matter was referred to a larger bench for reconsideration. Subsequently, a 5-judge constitutional bench of the led by CJI was set up to consider the ruling laid down Asian Resurfacing.

⁹ Criminal Appeal No. 1375-1376 of 2013

Issues at hand?

- Whether the Court in the exercise of its jurisdiction under Article 142 of the Constitution of India can order automatic vacation of all interim orders of the High Courts of staying proceedings of civil and criminal cases on the expiry of a certain period?
- Whether the Court, in the exercise of its jurisdiction under Article 142 of the Constitution of India, can direct the High Courts to decide pending cases in which interim orders of stay of proceedings has been granted on a day-to-day basis and within a fixed period?

Decision of the Court

- Justice Oka, delivering the majority opinion alongside the CJ and Justices Pardiwala and Misra, began by disagreeing with the ruling laid down in the Asian Resurfacing judgment. They emphasized that Constitutional Courts should refrain from imposing time-bound schedules for case disposal unless in exceptional circumstances. Acknowledging the varying patterns of case pendency and disposal across different courts, they emphasized the importance of allowing judge's discretion in deciding the duration of interim reliefs.
- Furthermore, they clarified that the Court cannot unilaterally declare an automatic vacation of stay orders issued by High Courts under Article 142 of the Constitution. They also outlined guidelines for dealing with interim reliefs and the exercise of discretionary power under Article 142 of the Constitution.
- Additionally, in his concurring opinion, Justice Pankaj Mithal echoed the sentiment that unless specified otherwise, a stay order should persist until the main matter is decided or until an Application is filed for its vacation. He stressed the importance of adhering to principles of natural justice when extending, modifying, varying, or vacating such orders.
- Justice Abhay S. Oka, supported by a majority of 4 judges while Justice Manoj Misra concurred separately, reiterated that a stay order can only be terminated after all parties have been heard. Therefore, rejecting the notion of a 6-month time limit for vacating stay orders, asserting that it would undermine justice by nullifying lawfully passed interim orders without proper consideration of the parties' arguments.
- The Court also emphasized that setting such time limits would constitute impermissible judicial legislation, a power reserved for the legislature. Instead, they suggested that High Courts should prioritize Applications seeking the vacation of stay orders to expedite the trial process, without necessarily tying them to the main case.
- Justice Misra drew attention to Article 226(3) of the Constitution, which already provides a 2-week time limit for High Courts to consider applications for the vacation of interim orders. He noted that this provision essentially allows for the automatic vacation of stay orders if the application is not disposed of within the stipulated timeframe.

HSA Viewpoint

Supreme Court's ongoing decision-making process emphasizes its dedication to equitable proceedings. By rejecting automatic termination/vacation of stay orders and emphasizing the necessity of hearing all parties, the Supreme Court has upheld the integrity of due process. Additionally, the recognition of varying Court dynamics demonstrates a reasonable approach to practical considerations. The reversal of Asian Resurfacing will surely lead to lesser burden on the litigants as well as the High Courts.

Venkataraman Krishnamurthy & Anr v. Lodha Crown Buildmart Pvt Ltd

Supreme Court of India | 2024 INSC 132

Background facts

- Lodha Crown Buildmart Pvt Ltd (**Respondent**) is involved in the business of general construction of non-residential buildings. Venkataraman Krishnamurthy & Another (**Appellants**) had entered into an Agreement with the Respondent dated November 29, 2013 (**Agreement**) for the purchase of an apartment bearing no. B-602, on the 6th floor in the building named 'Lodha Evoq' at the New Cuffe Parade, Wadala, Mumbai (**Apartment**).
- The total value of the said apartment was INR 7,55,50,956 out of which INR 2,25,31,148 was paid by the Appellant in the 4 installments to the Respondent as per the Agreement without any default and the balance amount INR 5,83,53,615 was to be paid at the time of initiation of fit outs. The date of delivery of the possession of the Apartment was decided as June 30, 2016, or within the grace period of 1 year, i.e., on or before June 30, 2017.
- The Respondent delayed in delivering the possession of the Apartment within the agreed period, which included grace period and thereafter terminated the Agreement.
- Thereafter, the Appellant filed a complaint at the National Consumer Dispute Redressal Commission, New Delhi (**NCDRC**).
- In the complaint, it was alleged by the Appellant that the Respondent had not delivered the possession of the Apartment despite numerous follow-ups. Following this, the Respondent had replied that it was due to the delay in getting permissions by the Civil Aviation Authority and in the payment of 4th set of instalments by the Appellant because of travelling.

- At the NCDRC, the Appellant prayed for the refund of advance deposited amount with compound interest of @18% p.a. along with the compensation for harassment, mental agony, torture, apart from litigation costs, which would be borne by respective parties as per the Agreement.
- On November 11, 2022, NCDRC ordered that (i) the Respondent shall deliver the actual possession of the Apartment with amenities and facilities within the 3 months of the date of the order, (ii) the Respondent shall arrange a joint inspection with the Appellant and the respective representatives from both sides, within 15 days of this Order and if there is any deficiencies are found then the Respondent shall have to rectify the same within 30 days from the date of such joint inspection (iii) the Respondent shall pay delay compensation with @6% p.a. on the total amount paid (iv) there was some delay in delivery of possession but it was not 'unreasonable' and then further opined that if Appellant does not wish to take possession of the Apartment, he shall make a written request to the Respondent regarding the same and for return of the paid amount, on which the Respondent after deducting/forfeiting the earnest money, return the balance amount to the Appellant within the period of 2 months from the date of the order.
- Aggrieved by the said order of NCDRC, the Appellant had appealed to the Supreme Court.

Issue at hand?

- Whether the party has the right to terminate an agreement and claim the unconditional refund of the total amount paid by them with the compensation and interest on the paid amount?

Decision of the Court

- Justice Aniruddha Bose observed that once an agreement gets enforced between the parties, it becomes binding on them and therefore, if any dispute arises between the parties regarding the breach of conditions mentioned in the agreement by either party, the consequences mentioned in the agreement for the same have to be adhered to, and be legally enforceable.
- Supreme Court also opined that the Court/Tribunals are not allowed to re-write the Agreement, nor can they interpret the Agreement on their own terms and apply its own subjective criteria to determine the course of action. They have to simply interpret the terms and conditions of the contract, which was also held in the recent judgement of *Shree Ambica Medical Stores v. Surat People's Coop Bank Ltd*¹⁰.
- The Supreme Court also referred to the constitution bench decision of *General Assurance Society Ltd v. Chandumull Jain & Ors*¹¹ where it was held that the duty of the Court in interpreting the agreement is to interpret the words in which the contract is made by the parties and it is not the duty of the Court to make a new contract, however reasonable it is, if the parties had not made it.
- The Supreme Court referred to Clause 11.3 of the Agreement which mentions about the right of election, in which 'when the company fails in offering the possession of the unit for fit outs by the date mentioned in the agreement, then the purchaser has the right to terminate the contract within the 90 days of the end of the mentioned grace period by giving the notice in writing to the company, then the company shall be liable to refund the total consideration amount in the 12 equal monthly instalments through post-dated cheques and also the simple interest thereon @6% per annum from the date of receipt of total or part consideration till the repayment'.
- Relying on the above-mentioned clause, the Supreme Court cancelled the Order of NCDRC which ordered deduction/forfeiture of the earnest money and refund the balance amount with simple interest thereon @6% from the receipt of total or part consideration till the repayment and held that the NCDRC has to simply rely on the terms and conditions mentioned in the Agreement for the breach of conditions by one or more parties.
- The Supreme Court held that the NCDRC is not allowed to apply its own standard while interpreting the Agreement and hence, it had overstepped its power and jurisdiction in applying its own rationale or logic in doing the same.
- The Court also held that the steps towards termination of the Agreement by the Appellant are valid and not in dispute as the Agreement was unilaterally altered/modified by the Respondent without any novation of the same.
- It was further opined by the Court that any steps taken by the person for the avoidance of tax is natural, as that is neither illegal, nor it is considered to be tax evasion.
- Finally, it was held by the Supreme Court that the Respondent has to refund the deposited amount of INR 2,25,31,148 with the 12 equal amount monthly instalments through post-dated cheques with the simple interest of @12% p.a. from the date of receipt of receiving the said amount till the actual repayment of the amount.

HSA Viewpoint

The Court has re-affirmed and upheld the use of principle of simple interpretation approach while interpreting the terms and conditions mentioned in the contract. The judgment is also in consonance with the various other judgements of the Supreme Court that talk about the interpretation of the contract in its simple sense without using the Courts' logic and rationale in interpreting it and adhering closely to the literal meaning of the conditions mentioned in the contract for the breach of the conditions at the event of breach by one or more parties. The clarification on the subject of tax avoidance is useful and will potentially help reduce litigation stemming from citizens avoiding or minimizing their tax liability legally and without any evasion.

¹⁰ Civil Appeal No. 562 of 2020

¹¹ 1966 AIR 1644

HSA AT A GLANCE

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