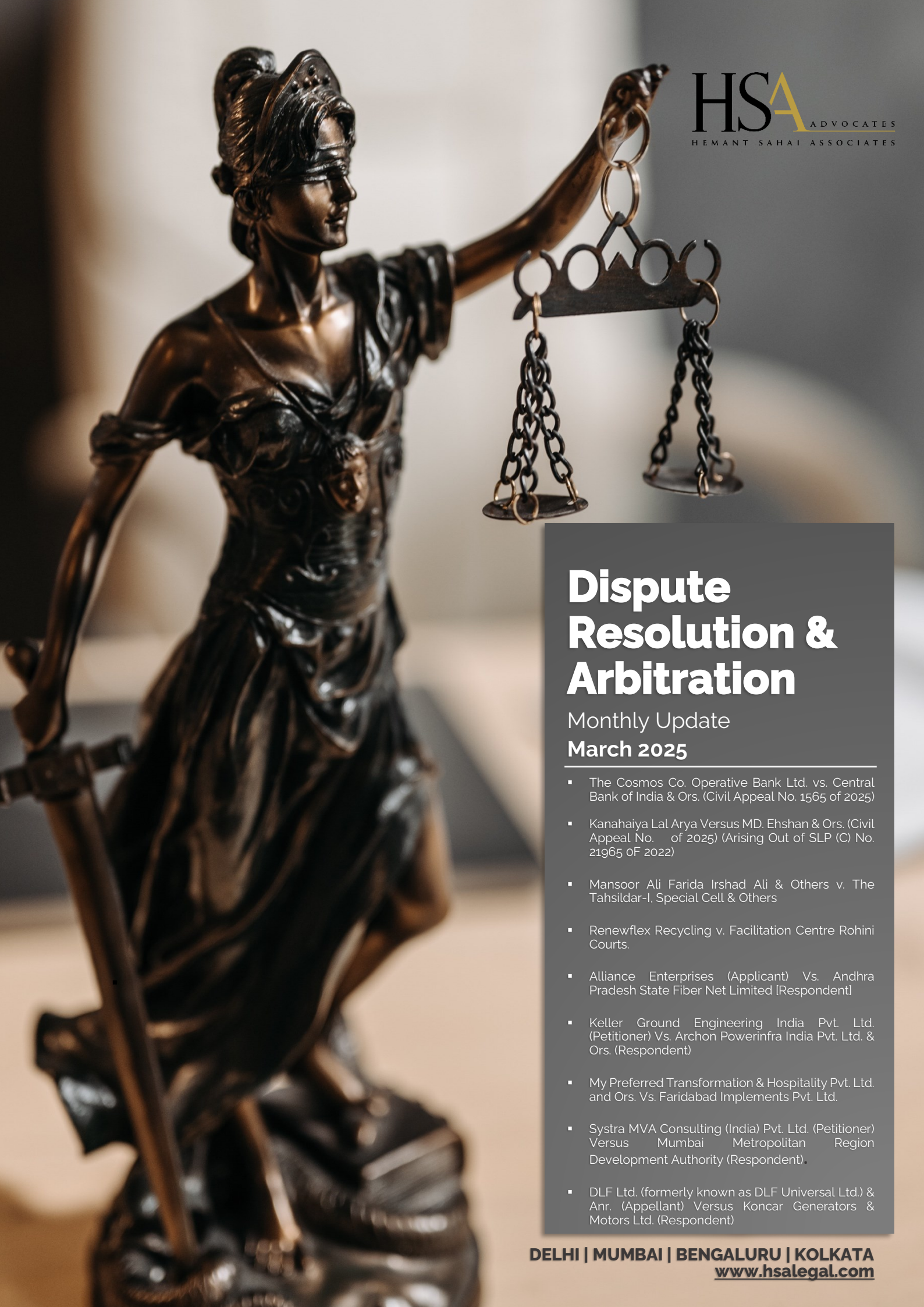

HSA ADVOCATES
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Dispute Resolution & Arbitration

Monthly Update

March 2025

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DISPUTE RESOLUTION AND ARBITRATION UPDATE

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The Cosmos Co. Operative Bank Ltd. vs. Central Bank of India & Ors. (Civil Appeal No. 1565 of 2025)

2025 SCC OnLine SC 352

Introduction

- The Supreme Court's judgment in the case, **The Cosmos Co. Operative Bank vs. Central Bank of India & Ors,** highlights important legal principles about the different kinds of mortgages in Indian Law. It particularly sheds light on the *legal mortgage* and *equitable mortgage* about the Transfer of Property Act, 1882 (*hereinafter referred to as "**TP Act**"*), and the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management, and Transfer Act, 1963 (*hereinafter referred to as "**MOFA Act**"*). A division bench of the Supreme Court, comprising Justice J.B. Pardiwala and Justice R. Mahadevan, meticulously established the concept of Equitable Mortgage in India, its nature, rights flowing from it, and differences between English and Indian Law in this regard. The judgment effectively elucidates that an equitable mortgage created on the strength of a) part deeds, b) documents purporting title, or c) evincing intention of parties to create an interest is a valid mortgage; however, such rights are only *rights in personam*. Additionally, the judgment establishes the fundamental principle that a share certificate confirming ownership has the effect of conveyance of title.

Background facts

- Mortgage:

  In 1989, borrowers had availed a loan facility against their property from the Central Bank of India (*hereinafter referred to as the "**Respondent Bank**"*) for 30 Lakh by furnishing an unregistered agreement of sale as security. The loan was passed based on said security, and a mortgage was created. In 1998, the borrowers availed another loan against the same property from The Cosmos Co-operative Bank Ltd (*hereinafter referred to as "**Appellant Bank**"*) by furnishing the share certificates as security.

- Default of Loan:

  Subsequently, the borrowers defaulted in repayment of the loan and the Respondent Bank initiated proceedings for the recovery of the loan amount before the Debt Recovery Tribunal - I (*hereinafter referred to as "**DRT**"*), Mumbai.

- Findings of DRT:

  The DRT held the borrowers jointly and severally liable to pay an amount of Rs 43,15,405.56 with interest thereon of 15% per annum to the Respondent Bank. However, it raised a question on the validity of the mortgage and the charge created. The Court alluded that unless the title deeds were brought on records, it could not be ascertained if the documents were sufficient to create the mortgage.

- Findings of DRAT:

  Based on the observations of the DRT, the Central Bank filed an appeal before the Debt Recovery Appellate Tribunal (*hereinafter referred to as the "**DRAT**"*). DRAT tried to adjudicate on the issue of which bank had the first charge over the borrowers' property. It held that the order passed by DRT was correct, on the basis that the title deeds surrendered were with the Respondent Bank and the mortgage was never denied by any party to the suit. Hence the mortgage in favour of the Respondent Bank was valid and the Appellant Bank had no claim to the property.

- Findings of High Court:

  The Appellant Bank aggrieved by the order of DRAT, filed a writ petition challenging the same. The High Court agreed with the findings of DRAT and recorded that the mortgage in favor of the Appellant Bank was invalid because they had no valid title deeds.

- Appeal in Supreme Court:

  Consequently, the Appellant Bankfiled an appeal in the Supreme Court of India challenging the judgment of the High Court.

Issue(s) at hand

Whether the High Court commit any error in passing the impugned order?

Findings of the Court

- Relevant provisions:

  The Court interpreted and applied the legal provisions regarding mortgages in light of the relevant facts of the case. Special emphasis was given to interpretation of the **Sections 58 and 100 of the TP Act**. The Court highly relied on the landmark case of *Suraj Lamp & Industries through Director v State of Haryana & Ors*[1]. The Court drew attention to the importance of registration of documents to give publicity and exposure to various transactions in respect of immovable properties and enable individuals to understand if the property is subject to any legal obligation or liability.

- Concept of equitable mortgage**:**

  After considering the provisions of Section 58 of the TP Act and works of various authors like Sir Willian Holdsworth on the subject, the Court deduced that the intent of creating a mortgage is essentially to create nothing more than a security. It is not intended as a mechanism of transferring either ownership or vested interest in the strictest sense but rather only as a means for providing security.

  This gives rise to the concept of equitable mortgage wherein based on the intent of the parties and mutual understanding between them, a charge that is legally recognized can be created on the property in exchange for a loan. Such an agreement requires no legal deeds, agreements, memorandum or note rather it primarily aims at hassle-free transactions without the cumbersome formalities of transfer of conveyance. The Court held that where the borrower willingly parts away with any title deed, document, promissory note, or an undertaking; and deposits the same with the lender to avail any credit facility and upon such deposit the loan is advanced; then such intention and conduct of parties alone would give an effect to mortgage.

  Like in the present case, the deposit of agreement of sale albeit unregistered indicated the understanding between the parties to create a mortgage and an intention to create a charge and treat the subject property as collateral or security. The bank can demand specific performance of the contract through the concept of equitable mortgage.

- Nature of equitable mortgage**:**

  The court held that an equitable mortgage is a creation of and by-product of the doctrine of equity and hence any rights flowing from such a mortgage are in personal character and only affect *rights in personam.* Such a right will not operate on any stranger or subsequent incumbrance unaware of such equitable mortgage. The equitable mortgage does not create any formal charge on the property, nor any transfer or conveyance of interest is said to occur.

  Equitable Mortgage being a right in personam does not affect subsequent encumbrances and will not be enforceable against such successive mortgages if the creation of such equitable charge was

[1] (2012) 1 SCC 656

HSA
Viewpoint

In the present case, the borrowers had taken two loans from two different banks on the strength of two different documents. The Court based on relevant provisions of the TP Act and the MOFA Act ascertained the real meaning of the legal & equitable mortgage and laid down the essentials of a valid mortgage.

The Court has rightly emphasized the distinction between equitable and legal mortgage to conclude that the Appellant Bank had a valid charge and mortgage. The Court underscored the value of a share certificate of ownership as a valid title of conveyance and concluded that a legal charge had been created on the flat in favor of the Appellant Bank. The Court rightly held that even if the agreement of sale given to the Respondent Bank had been registered and the public notice of their existence had been given, the share certificate of ownership would be given priority since it has the effect of actual title deeds of conveyance and fulfills all the requisites of a mortgage in terms of Section 58 of the TP Act.

The Supreme Court has rightly overturned the judgment of the High Court as they erred by undermining the legality of the share certificate of ownership over the unregistered agreement of sale and failed to understand the essentials of a valid mortgage. The Hon'ble Court has appropriately insisted on the registration of documents and their value in law. The Supreme Court has rightly emphasized the significance of a share certificate of ownership in determining the title and priority of a mortgage. The Court correctly noted that the Respondent Bank failed to demand the share certificate or issue a public notice of equitable charge, thereby allowing the Appellant Bank to rely on the society's confirmation of no prior encumbrances. By applying Section 78 of the Transfer of Property Act, 1882, the Court appropriately held that the equitable charge of the Respondent Bank is subordinate to the charge created in favor of the Appellant Bank. This decision reinforces the necessity of proper due diligence and compliance with legal requirements in mortgage transactions.

not disclosed to them. If the mortgagee voluntarily, fails to create legally valid security then he may be said to have enabled the subsequent encumbrances due to his gross negligence.

- English law vs Indian Law on Mortgage by deposit of title deeds:

  Under English Law, an equitable mortgage can be created in 2 ways such as: a) by depositing original title deeds of the subject property to the lender and such title deeds may or may not be held by the lender, or b) by way of a memorandum of understanding or an agreement recording the intention of the parties to create a charge over specific property. English courts have also considered a promissory note or an agreement for purchase to create an equitable mortgage. English Law considers a mortgage created by deposit of title or documents as an equitable mortgage and not a legal mortgage.

  In the Indian Law under Section 58(f) of the TP Act, statutory recognition is given to the mode of creation of mortgage by deposit of title deeds. Such a mortgage is considered a legal mortgage and not an equitable mortgage. It is considered a valid legal mortgage because it complies with all the essentials of a mortgage namely; a) the creation of debt, b) the deposit of title, and c) an intention that the deed shall operate security for debt.

- Mortgage in our present case:

  In our present case based on the deposit of an unregistered agreement of sale as security for a mortgage to the Respondent Bank, and the understanding of provisions of deposit of title under the TP Act; the Court held that the mortgage was an equitable mortgage and not a legal mortgage.

  The Court upheld the law laid down in the *Suraj Lamp & Industries through the Director v The State of Haryana & Ors*, that a contract of sale i.e. an agreement of sale does not itself create any interest in or charge on any property. Further, the Court observed that when the loan was advanced by the Respondent Bank, a Memorandum of Equitable Mortgage recording the deposit of the agreement to sale was sought to be created, though it was not placed on record. The Court noted that there were no correspondences where the share certificate of ownership was demanded, despite the fact that the Bank was very well aware that conveyance of title, as per Section 11 of the MOFA Act, 1963 read with Section 4 of the Maharashtra Co-operative Societies Act, 1970, takes place through such certificates and not merely by an agreement for sale. Moreover, the Court found that no public notice of the equitable charge was issued by the Respondent Bank, which was evident from the fact that the Appellant Bank, upon inquiry, was informed by the concerned cooperative housing society that the flat was not subject to any prior encumbrances or charge. Consequently, in terms of Section 78 of the Transfer of Property Act, 1882, the equitable charge of the Respondent Bank was held to be subordinate to the charge created in favor of the Appellant Bank, and the impugned High Court order was set aside.

  The Appellant Bank on the other hand had availed loan based on the share certificate of the property. The Court reaffirmed that the share certificate of ownership has the effect of conveyance. The Appellant Bank had also inquired with the co-operative housing society who had assured that there were no previous encumbrances or charges on the property.

  Hence the Court set aside the order of the High Court and conclusively held that equitable mortgage does not create any right on the subject property but rather only a *right in personam*. A legal mortgage always assumes priority in charge over the equitable mortgage but that does not nullify the existence of an equitable mortgage. Equitable mortgages are still enforceable as secondary charges if the other considerations such as the notice of such mortgage are fulfilled.

Kanahaiya Lal Arya Versus MD. Ehshan & Ors. (Civil Appeal No. of 2025) (Arising Out of SLP (C) No. 21965 0F 2022)

2025 SCC OnLine SC 432

Introduction

- The Supreme Court's judgment in the case, **Kanahaiya Lal Arya Versus MD. Ehshan & Ors,** highlights important legal principles about the 'bonafide requirements' for the eviction of the tenant. It particularly revolves around the issue of bonafide requirement for eviction of the tenant under the Rent Control Act (*herein after referred to as "**RC Act**"*) governing landlord-tenant relationships and the Jharkhand Building (Lease, Rent & Eviction) Control Act (*herein after referred to as the "**JBC Act**"*). In India, the **bonafide requirement** of the landlord is a key ground for eviction, as per the provisions of the **Rent Control Act** applicable in various states. A landlord may seek eviction if they can establish that they genuinely and in good faith require the property for their own use or for the use of their family members. The law requires the landlord to prove that the demand for possession is not merely for increasing rent or for speculative reasons but stems from a genuine and sincere need.

Background facts

- **Landlord- Tenant:**

  The landlord is the owner of the suit land *(herein after referred to as the "**Appellant**")* The deceased father of the appellant during his lifetime had inducted the father of the tenant (*herein after referred to as the "**Respondent**")* in a portion of the tiled roof house on monthly rent. After the death of the Respondent father the respondent continued to have possession of the tenanted premises on the monthly rent basis. The appellant filed a eviction suit against the respondent as after the death of the appellant's father the Tenancy came to an end.

- **Compromise:**

  After filing of the suit by the Appellant the Respondent became angry and in frustration he set the tenanted premises on fire for which a case was filed against the respondent under section 436 of the Indian Penal Code for which the respondent entered into in a compromise and during the pendency of the suit under section 436 the respondent filed a petition under Section 9 (Directions for repairs to the building) of the Bihar Building (Lease, Rent, and Eviction) Control Act in the court of House Rent Controller but he lost upto the High Court. Thereafter, again the respondent filed a petition before the Court of Sub Divisional Magistrate, Chatra and a compromise was entered to by both the parties ant thereafter the Appellant got double storied *pucca* house constructed without removing the Respondent from the portion of the house in Occupation.

- **Dispute:**

  The Appellant in order to augment the income of his Family required the premises occupied by the respondent to set up an Ultrasound Machinery Facility for his two Unemployed Sons. So, the Appellant filed an eviction Suit for the eviction of the Respondent before the trial Courts on Two Grounds.

  a. For default in payment in rent and
  b. Personal necessity of the Suit land by the appellant

- **Findings of Trial Courts:**

  The learned trial Court settled seven issues

  a. Whether the defendant/respondent has failed to pay the monthly rent in respect of the tenanted premises and the plaintiff/appellant is entitled to recover the total arrear rent of Rs.3,825/- from February, 2001 to October, 2001?
     - Considering the evidence in the record the Court came to the conclusion that the Respondent never defaulted in payment of rent and the finding of fact was not challenged by the Appellant before the First Appellate Court.
  b. Whether the plaintiff has personal necessity of the suit premises for the income of his sons?
     - Considering the evidence in the record the Court came to the Conclusion that the there is personal necessity of the tenanted premises by the Appellant.
  c. Whether the requirement of the defendant would be met by a partial eviction of the defendant?
     - Considering the evidence in the record the Court came to the Conclusion that partial eviction of the respondent will not fulfil the personal necessity of the respondent.

The trial court held that the Appellant is entitled to the reliefs for eviction of the suit premise and passed the Judgment and decree for eviction of the respondent from the suit land.

- **Findings of First Appellate Court FAC:**

Being aggrieved by the Judgment of the Trial Court the Respondent moved to the District Judge, Chatra which was ultimately heard and disposed of by the learned First Appellate Court (herein after referred to as the FAC):

a. The learned FAC made independent appreciation of the evidence in the record and considering the fact that in an earlier case, the landlord got partial eviction of the defendant on the ground of personal necessity but later on gave the portion of the evicted premises to another person on rent and relying upon the Judgment of Hon'ble Patna High Court, Ranchi Bench, in the case of Bhanu Prasad Versus Chandra Prasad,[1] reported in (1997) 2 5 S.A. No. 317 of 2006 PLJR 865.

b. Not interested in recovery of rent

   The FAC also considered that the Appellant is not interested in recovery of the rent from the respondent and he is only interested in eviction of the respondent as is evident from his conduct by not filing any appeal against the finding of the trial court where the trial court has held that the respondent has not respondent in payment of arrear rent.

c. Higher rents paid by other tenants

   The learned FAC also considered that the other tenants of the Appellant are paying much higher rent than the respondent.

d. No knowledge of Machine

   The FAC also considered the fact that the sons of the Appellant have no training in operating Ultrasound Machine and have no degree in Pharmacy and also considered that it is not easy in procuring a technician of a Ultrasound Machine like hiring a driver for a car.

e. Appeal Allowed Judgment reversed

   The first appellate court also considered the Ext. 4 series which is the report of Advocate Commissioner in which the measurement of the rooms in occupation of the tenant has been mentioned in detail and also found fault with the plaintiff by not mentioning the detailed requirement of the area required by him for setting up Ultrasound Machine and went on to hold that the plaintiff requires the tenanted premises to let out the same for higher rent and there is no reasonable, bona fide and good faith need of the disputed premises by the plaintiff and allowed the appeal and reversed the judgment and decree of the trial court and dismissed the same.

- **Findings of High Court:**

  The Appellant aggrieved by the order of FAC, filed a Second Appeal challenging the same. The High Court agreed with the findings of FAC and recorded that it being a settled principle of law that merely because the first appellate court has not met the reasoning given by the trial court which also could not be established by the appellant by showing any particular reasoning which was not met by the first appellate court, the judgment and decree passed by the first appellate court cannot be reversed by the High Court in exercise of the jurisdiction under Section 100 of the Code of Civil Procedure since the impugned judgment and decree of the first appellate court do not suffer any perversity, this Court is of the considered view that there is no justifiable reason to interfere with the same. Thus the only substantial question of law that is "whether the court of appeal below has committed error of law in reversing the findings on the issue of personal necessity without meeting the reasonings given by the trial court' as formulated is answered in the negative and the Appeal was dismissed.

- **Appeal in Supreme Court:**

  Consequently, the Appellant filed an appeal in the Supreme Court of India challenging the judgment of the High Court.

Issue(s) at hand?

- Decree of Eviction of the respondent from the suit land to be passed only on the ground of bona fide need of establishing an ultrasound machine for the benefit of his two unemployed Sons?

Findings of the Court

- **Upheld bona fide need of the Appellant-Landlord:**

  The law with regard to eviction of a tenant from the suit premises on the ground of bona fide need of the landlord is well settled. The need has to be a real one rather than a mere desire to get the premises vacated. The landlord is the best judge to decide which of his property should be vacated for satisfying his particular need. The tenant has no role in dictating as to which premises the landlord should get vacated for his need alleged in the suit for eviction

- **Landlord's Right to Decide:**

[1] 1988 SCC Online SC 179

The appellant-landlord is not obligated to initiate proceedings against other tenants. Once the decision is made to vacate the suit premises for his bona fide need, no error or illegality can be pointed out in this decision.

- **Suit Premises as Most Suitable Accommodation**:

  The court found that the suit premises is the most suitable location for establishing an ultrasound machine due to its proximity to a medical clinic and a pathological center and the appellant has demonstrated the capacity to invest in the ultrasound machine and has two unemployed sons. The need to establish the machine is driven by the intention to support his sons and enhance the family's income which established a bona fide need for vacating the premises to set up the ultrasound machine and provide for the appellant's sons is firmly established**.**

- **Argument**:

  Lack of expertise in operating ultrasound machine by the landlord's sons is irrelevant.

- **Reasoning**:

  Modern medical devices like ultrasound machines are typically operated by qualified technicians, not the person who installs them.

- **Eviction Suit:**

  The appellant-landlord had filed **Eviction Suit No. 11/1981** to evict the respondents-tenant from part of the premises. This suit eventually reached the **High Court** via **Second Appeal No. 40/1983**.

- **Terms of the Compromise:** The appellant-landlord agreed that the respondents-tenant would continue to be tenants of **three pucca rooms** that the appellant had reconstructed after demolishing the portion previously under tenancy.

- **No Clause Against Future Eviction Proceedings:** The compromise deed does not include any clause that prevents the appellant from initiating future eviction proceedings against the respondents-tenant.

- **Landlord's Right to Eviction:** The compromise does not intend to remove the landlord's **right to evict** the tenant in the future for reasons such as non-payment of rent, making **material alterations**, damaging the property, or subletting to an outsider.

HSA
Viewpoint

The Supreme Court has after carefully reviewing the facts of the case, including the findings of the court of first instance, which indicate that the landlord's need for the property is genuine, supported by the appropriateness of the premises for the business rightly overturned the Judgment of the High Court as they erred by undermining the rights of the landlord-appellant relating to the eviction of the tenant- respondent from the suit premises. The Hon'ble Court has appropriately acknowledged the Landlord's right to make a personal decision about using his property for a legitimate purpose by insisting on the fact that the landlord is the best judge to decide which of his property should be vacated for the satisfying his particular need without being forced to initiate similar proceedings against other tenants. The tenant's right to remain in the premises has been undermined in this case, especially on the ground that the landlord's need of the property is genuine and bona fide. In future cases it would be difficult for the tenant to prove his case and would have to focus on challenging the sufficiency of the Landlord's proof for the need of the suit premises. The Court has highlighted the fact that in common knowledge medical devices such as ultrasound machines are typically operated by technicians or medical experts rather that the owner of the device thus this point can be seen as a **realistic** and **practical consideration**, reflecting modern business practices where specialized knowledge is often outsourced to experts rather than being expected from the business owner themselves

.From the above Judgment it can be understood that this Judgment insisting on the fact that the landlord is the best judge to decide which of his property should be vacated for the satisfying his particular need.

Mansoor Ali Farida Irshad Ali & Others vs. The Tahsildar I, Special Cell & Others

2025 SCC OnLine SC 445

Introduction

- The Supreme Court of India in the case of **Mansoor Ali Farida Irshad Ali & Others v. The Tahsildar-I, Special Cell & Others**" adjudicated upon significant issues pertaining to slum rehabilitation and the jurisdiction of the Slum Rehabilitation Authority (SRA) in the redevelopment of slum areas under the provisions of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (hereinafter referred to as the *Slum Act*). The appellants, who were occupants of transit accommodations on a plot designated for slum rehabilitation, challenged the eviction notices issued to them by the Slum Rehabilitation Authority (SRA) by contending that the land fell under the jurisdiction of the Maharashtra Housing and Area Development Authority (MHADA) and should be redeveloped under Regulation 33(5) of the Development Control Regulations (DCR) for Greater Mumbai, 1991, rather than Regulation 33(10), which pertains to slum rehabilitation. A division bench comprising of the *Hon'ble Justice Sudhanshu Dhulia and Hon'ble Justice Krishnan Vinod Chandran* dismissed the appeal preferred by the transit camp tenants occupants holding that the subject premises constituted a 'censused slum' and, as such it is included in the definition of slum under Regulation 33(10) of DCR for the purpose of redevelopment. The Court further held that for the purpose of redevelopment under Regulation 33(10) of DCR, no separate notification is required to be issued U/s.4 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971.The Court emphasized that the plot in question, although technically fall under the layout of MHADA, but had been developed as a slum over the years and was thus will be eligible for redevelopment under Regulation 33(10) of the DCR.

Background facts

- **Transit Camp Tenants:**

  The appellants were residing in transit accommodations provided during the widening of the Western Express Highway. These accommodations were on land owned by the Maharashtra Housing and Area Development Authority (MHADA).

- **Redevelopment Initiative:**

  The SRA identified the area as a **'censused slum'** based on surveys from 1981, making it eligible for redevelopment under Regulation 33(10) of the Development Control Regulations (DCR). MHADA issued a No Objection Certificate to the SRA for this redevelopment.

- **SRA Rehabilitation Scheme (2010):**

  SRA sanctions a rehabilitation scheme in 2010 and appoints Respondent No.3 ('developer') to redevelop the area for Respondent No.9 i.e. the proposed society named Bharat Ekta Co-operative Society ('Bharat Ekta Society') in terms of the Slum Act and Development Control Regulations for Greater Mumbai, 1991 ('hereinafter DCR'). The developer initiated the redevelopment in project in two phases, in Phase-II the appellants did not corporate with developer. Consequently, the developer sought the intervention of the competent authority to initiate necessary proceeding U/s. 33 and 38 of the Slum Act, thus in exercise of its power SRA issued a notice directing the appellant to vacate the premises within 15 days.

- **AGRC Proceedings (2019):**

  The Additional Grievance Redressal Committee (AGRC) declared the appellants ineligible for rehabilitation, stating they were merely transit camp tenants with no landlord-tenant relationship with MHADA. It rejected their contention that the plot was a MHADA layout requiring redevelopment under Regulation 33(5) of the DCR, affirming MHADA's consistent stance that the plot was never its layout. Since the appellants were not MHADA tenants but only transit occupants, redevelopment under Regulation 33(10) by the SRA was valid. The appellants did not challenge this order before any forum.

- **SRA Eviction Notice (2022):**

  Due to non-compliance with the first notice dated 28.01.2019 and the redevelopment process, the SRA issued a second eviction notice dated 06.12.2022 to the appellants, directing them to vacate within 48 hours.

- **High Court Writ Petition (2022):**

  Based on the second eviction issued by the SRA the appellants filed a writ petition challenging the second eviction notice. The Bombay High Court dismissed the writ petition, observing that the appellants did not approach the Court with clean hands, they did not disclose the prior notice issued by SRA that the AGRC order from 2019 was never challenged, and the appellants waited for four years before approaching the Bombay High Court. Their failure to challenge the previous

HSA
Viewpoint

In the present case, the Appellant challenged the notices issued by the Slum Rehabilitation Authority (SRA) questioning the Rehabilitation Project's validity by claiming that the plot in question for redevelopment falls under the MHADA and not under SRA. The Court based on relevant provisions of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 and Maharashtra Housing and Area Development Act, 1976 ('MHADA Act') has ascertained the importance of slum rehabilitation as a welfare measure to improve the living conditions of slum dwellers and the legitimacy of the SRA's jurisdiction in implementing redevelopment projects under the Slum Act.

The Court has emphasised the doctrine of laches that litigants cannot be permitted to sit on their rights and approach the Court at a belated stage, the appellants did not approach the Court with clean hands in as much as they did not disclose the earlier notice even when the later notice of 2022 refers to the previous notice of 2019. There is no satisfactory explanation on behalf of the appellants as to why they never challenged the AGRC order, except for making a bald statement that they were not aware of that order. The High Court rightly disbelieves this and further notes that AGRC order has attained finality. Following which the Bombay High Court dismissed the writ petition, upholding the SRA's notice and allowing the redevelopment to proceed.

The Supreme Court by dismissing the appeal filed against the order of the Bombay High Court upholds the authority of the SRA and strengthens the legal framework governing slum redevelopment in Maharashtra. This judgment establishes that censused slums do not require separate notifications for redevelopment; they automatically qualify under Regulation 33(10) of the DCR. It clarifies that transit camp tenants cannot claim the same rights as original slum dwellers in redevelopment projects. The ruling also emphasizes that failure to challenge an adverse order in a timely manner can bar future claims under the doctrine of laches. Furthermore, once a majority of eligible slum dwellers consent to a project, a few dissenting individuals cannot obstruct its implementation. This precedent reinforces the legal framework facilitating the redevelopment of slum areas in Maharashtra, particularly "censused slums." By eliminating the need for additional notifications for such slums, the Court has streamlined the process, potentially accelerating urban development projects.

adverse ruling indicated a lack of due diligence, making their petition untenable under the principle of finality.

- **Supreme Court Appeal (2025):**

  The appellants appealed to the Supreme Court of India. The Court dismissed the appeals, emphasizing that the redevelopment project had progressed significantly with the consent of over 70% of eligible slum dwellers. The Court noted that the appellants' objections lacked merit and that the redevelopment did not suffer from any legal infirmity.

Issue(s) at hand?

- Whether the Slum Rehabilitation Project falls under the Maharashtra Housing and Area Development Authority (MHADA) and not the SRA.

Findings of the Court

- **Definition and Notification of Censused Slums:**

  If a plot is listed in official government census records as a slum, it is automatically eligible for redevelopment under the Slum Act. The Court held that "censused slums," as defined in Regulation 33(10)(II)(i) and (viii) of the DCR, do not require a separate declaration under Section 4 of the Slum Act for redevelopment purposes.

  In this case, MHADA clarified before the Apex Court, High Court, and AGRC that while the land belongs to MHADA, it is not part of a MHADA layout. MHADA issued an NOC to SRA for redevelopment under Regulation 33(10) of the DCR, as the site was declared a "censused slum" in 1981. The regulation establishes that a censused slum is automatically included in the definition of slums for redevelopment under Regulation 33(10), eliminating the need for a separate notification under Section 4 of the Slum Act.

- **Occupancy Rights of the Appellants:**

  The Court clarified that the appellants, being transit camp occupants, did not possess tenant rights under MHADA. Their occupancy was temporary, and the payments made were transit charges, not rent, thereby negating their claim that the land should be redeveloped under Regulation 33(5).

- **Finality of Previous Orders:**

  The Court emphasized that litigants cannot be permitted to sit idle on their rights and approach the Court at a belated stage merely to stall public interest projects.

  In the present case the Court noted that an earlier order by the Apex Grievance Redressal Committee (AGRC), which dismissed the appellants' challenge against a prior eviction notice, had attained finality as it was not appealed. The Court emphasized that this order could not be revisited on the same grounds. The appellants waited for four years before approaching the Bombay High Court. Their failure to challenge the previous adverse ruling indicated a lack of due diligence, making their petition untenable under the principle of finality.

- **Validity of the Slum Rehabilitation Project:**

  The Court clarified that the land, though owned by MHADA, was classified as a censused slum under Regulation 33(10), making it eligible for SRA-driven rehabilitation. The Court stated that a censused slum does not require a separate declaration under Section 4 of the Slum Act, as it is already included within the purview of slum redevelopment.

  As in this case the appellants contended that their land was under the jurisdiction of the Maharashtra Housing and Area Development Authority (MHADA) and not the SRA, arguing that only MHADA had the authority to redevelop it under Regulation 33(5) of the Development Control Regulations (DCR).

- **Progress and Approval of Redevelopment:**

  Observing that the redevelopment was well underway and had the approval of the majority of eligible residents, the Court held that further delays would undermine the welfare objectives of the Slum Act.

- **Conduct of the Appellants:**

  The Court found that the appellants had concealed prior proceedings and were not diligent in pursuing timely legal remedies against the AGRC's adverse order.

Renewflex Recycling vs. Facilitation Centre Rohini Courts

2025 SCC OnLine Del 978

Background facts

- The Petitioner supplied goods to Respondent No. 2 under a commercial arrangement. Despite repeated reminders, the outstanding amount remained unpaid, prompting the petitioner to issue a legal notice. When no response was received, the petitioner attempted to resolve the matter through mediation by sending a formal request three days later. However, Respondent No. 2 did not respond.
- Subsequently, the Petitioner filed a commercial suit. The Registry (Respondent No. 1) rejected the plaint, citing non-compliance with *Section 12A* of the *Commercial Courts Act, 2015*, due to the absence of a Non-Starter Report from the mediation authority. Aggrieved, the petitioner filed the present writ petition challenging this decision, arguing that its *bona fide* mediation efforts should be deemed sufficient compliance with *Section 12A*.

Issue(s) at hand?

- Whether the procedural requirement of obtaining a Non-Starter Report under *Section 12A* of the *Commercial Courts Act, 2015*, can be deemed fulfilled by a litigant's independent mediation efforts without following the prescribed statutory framework.

Findings of the Court

- The Delhi High Court dismissed the writ petition, affirming the mandatory nature of the statutory pre-institution mediation process under *Section 12A* of the *Commercial Courts Act, 2015*. The Court held that independent mediation efforts undertaken outside the statutory framework—such as the issuance of a legal notice proposing mediation—do not satisfy the procedural mandate of *Section 12A*.
- The Court relied on the principle laid down in *Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd., (2022) 10 SCC 1*, reinforcing that compliance with *Section 12A* is a jurisdictional requirement and cannot be circumvented. It rejected the Petitioner's argument that a lack of response to a self-initiated mediation request should be treated as a deemed 'Non-Starter' under *Section 12A*. Relying upon various judgments, the Court reiterated the principle that where a statute prescribes a particular method for executing a legal requirement, it must be followed strictly.
- Accordingly, the High Court ruled that a party must adhere to the mediation process under the *Legal Services Authorities Act, 1987*, as prescribed in *Section 12A*, and that any deviation from this statutory mechanism renders a suit non-maintainable.

HSA
Viewpoint

A strict and inflexible interpretation of *Section 12A*, as undertaken in the present case, risks undermining the very objective that the provision was designed to achieve. The legislative intent behind *Section 12A* was to foster the expeditious and amicable resolution of commercial disputes by encouraging parties to engage in mediation before resorting to formal litigation. However, a rigid insistence on institutional mediation—without accommodating *bona fide* efforts by parties to resolve disputes independently—risks frustrating the purpose of the provision rather than advancing it.

The decision in this case illustrates the perils of prioritising form over substance. Many commercial disputes, in practice, find resolution through informal negotiations and direct engagement between the parties, often obviating the need for statutorily prescribed mediation. Disallowing such genuine efforts in favour of a procedural straitjacket may serve to discourage parties from engaging in early dispute resolution and, ironically, lead to an increased burden on the very judicial system that the provision sought to unburden.

The fundamental principle of alternative dispute resolution is to promote efficiency, flexibility, and expedience in resolving commercial conflicts. A doctrinaire approach to *Section 12A*, which disregards pragmatic, good-faith mediation efforts, risks reducing pre-institution mediation to a mere perfunctory ritual. Needless to state the cliché—'rules of procedure are the handmaidens of justice and not its mistress'. The judiciary must, therefore, adopt a purposive construction of such provisions, ensuring that procedural rigour does not become an impediment to justice.

In The High Court of Andhra Pradesh

Alliance Enterprises (Applicant) Vs. Andhra Pradesh State Fiber Net Limited (Respondent)

Arbitration Application No. 48 of 2023

Background facts

- Andhra Pradesh State Fiber Net Limited ("Respondent") had floated a tender for inviting eligible service providers for commissioning and maintaining the last mile optical fiber connectivity to government offices in the district of Anantapur and Kadapa.
- Alliance Enterprises ("Applicant") won the tender floated by the Respondent. In view of the same, a Work and Contract Agreement ("Agreement") was entered into between the Applicant and Respondent on August 5th 2016. Cause 25 of the Agreement contained an Arbitration Clause.
- Under the Agreement various work orders were issued to the Applicant from time to time. The total value of the work orders issued to the Applicant was Rs 12,26,63,520/- (Rupees Twelve Crore Twenty-Six Lakhs Sixty-Three Thousand Five Hundred Twenty Only).
- According to the Applicant, all the works orders were executed, despite the same, the Respondent only made payment to the tune of Rs 2,82,60,159/- (Rupees Two Crore Eighty-Two Lakhs Sixty Thousand One Hundred Fifty-Nine Only).
- In view of the above, the Applicant sent many reminders to the Respondent to clear their dues. However, rather than making the payments which were due to the Applicant, the Respondent terminated the Agreement vide its order dated January 1st 2019.
- The Applicant objected to the same and requested the Respondent to clear their dues. Thereafter, the representatives of the Applicant and the Respondent tried to resolve the issues on several occasions.
- Despite the same the issues could not be resolved, and the Respondent did not clear the dues of the Applicant.
- In view of the above, the Applicant finally invoked the Arbitration Clause in the Agreement vide its letter dated October 17th 2022 and directed the Respondent to appoint an Arbitrator to resolve the dispute.
- However, since the Respondent did not appoint a Sole Arbitrator to resolve the dispute as per Clause 25 of the Agreement, the Applicant filed the present Application.

Issue(s) at hand?

- Whether the Application filed by the Applicant is barred by limitation?

Findings of the Court

- At the outset the Hon'ble Court relied on the judgement in the case of ***Arif Azim Co. Ltd. Vs. Aptech Ltd***.[1] and ***Aslam Ismail Khan Deshmukh Vs ASAP Fluids (P) Ltd.***[2] and held that the limitation period for filing an application for appointment of Arbitrator commences only after a valid notice for invoking arbitration has been issued by one party and there has been failure or refusal by the other party for the appointment of the Arbitrator.
- The Hon'ble Court further stated that in the present case the notice for invoking arbitration was issued on October 17th 2022, and the present Application was filed on August 31st 2023. Hence the Hon'ble held that the present Application was filed within the prescribed period of three years as per Article 137 of the Limitation Act, 1963.
- Accordingly, the Hon'ble Court held that the present Application is barred by limitation.
- Further, the Hon'ble Court relied on the judgement in the case of ***Datar Switchgears Ltd. Vs. Tata Finance Ltd. and Anr***[3] And held that since the Respondent did not appoint an Arbitrator within the time specified in the notice invoking arbitration and before the Applicant made the present Application, hence the Respondent has deemed to have lost their right to appoint an Arbitrator.
- In view of the above, the Hon'ble Court allowed the present Application and appointed Justice U Durga Parasad Rao, former judge of Andhra Pradesh High Court as the Sole Arbitrator.

HSA
Viewpoint

The judgment rendered by the Hon'ble Court clarified that the limitation period for seeking the appointment of an Arbitrator should not be confused with the limitation period for raising substantive claims. The judgment further reaffirms the principle that the limitation period for making an application for appointment of an Arbitrator begins only after a valid notice invoking arbitration is issued and the other party either fails or refuses to appoint an Arbitrator. The judgement also removes all ambiguities and makes it clear that if a party does not appoint an Arbitrator within the time specified in a valid arbitration notice, it loses the right to do so once the other party makes an application to the Court for the appointment of the Arbitrator.

Before the Hon'ble High Court of Judicature at Bombay

Keller Ground Engineering India Pvt. Ltd. (Petitioner) Vs. Archon Powerinfra India Pvt. Ltd. & Ors. (Respondent)

[1] (2024) 5 SCC 313
[2] (2025) 1 SCC 502
[3] 2000(7)Supreme145

Commercial Arbitration Petition No. 426 of 2024

Background facts

- The present matter pertains to a challenge to an application under Section 11 of the Arbitration and Conciliation Act, 1996 ("**Act**"). Owing to certain disputes between Keller Ground Engineering Pvt Ltd. ("**Petitioner**"), Archon Powerinfra India Pvt. Ltd. ("**Respondent No.1**") and Chhabra Associates ("**Respondent No.2**"), the Petitioner filed an application under section 11 of the Act, seeking the appointment of an arbitrator to resolve the disputes between the parties. However, it is pertinent to note that prior to the filing of the Section 11 Application, the Petitioner had filed another Petition under Section 9 of the Act, seeking interlocutory reliefs in connection with the dispute between the parties.
- The Petitioner had filed the aforementioned applications under Section 9 and Section 11 of the Act before the Hon'ble High Court of Bombay ("Hon'ble Court"), basis the arbitration agreements contained in the work orders entered into by the Petitioner with Respondent No.1 and Respondent No.2 respectively. As per the arbitration agreements in the aforesaid work orders, the venue for arbitration was agreed by the parties to be Mumbai, however, no reference was made designating the "seat" of the arbitration.
- However, Respondent No.1 and Respondent No.2 challenged the instant application under Section 11, albeit on different grounds. The contention of Respondent No.1, challenging the instant application under Section 11 was on the lack of the territorial jurisdiction of this Hon'ble Tribunal to the instant dispute. Respondent No.1 submitted that nothing in the activity envisaged in the work orders has been carried out in the State of Maharashtra, and further that Respondent No.1 is not located in Mumbai and therefore, no part of the cause of action claimed against Respondent No.1 could be deemed to have been arisen in Mumbai. Consequently, Respondent No.1 argued that the Hon'ble Court did not have jurisdiction under Section 11 of the Act, merely because the arbitration clause refers to Mumbai as the venue of arbitration.
- The challenge framed by Respondent No.2 to the instant application under Section 11 was based on the fact that Respondent No.2 was not privy to the arbitration agreement contained in the work order between the Petitioner and Respondent No.1, under which the work had been carried out. Respondent No.2 further contented that as all the work is carried out for Respondent No.1 under the work order executed by Respondent No.1, Respondent No.2 did not have privity to the aforesaid work order and no work was done under the work order executed by Respondent No.2 . Therefore, disputes and differences could only arise under the work order to which Respondent No. 2 is not a party.

Issue(s) at hand?

- Whether the Hon'ble Court had the territorial jurisdiction under Section 11 of the Act to entertain the present application.

Findings of the Court

- At the outset, the Hon'ble Court noted that each of the work orders contained an arbitration clause, wherein the venue of arbitration was stipulated as Mumbai. Accordingly, the Hon'ble Court opined that the parties, exercising their autonomous choice, have opted for Mumbai as the venue for the arbitration, thereby attracting the jurisdiction of this Court under Section 11 of the Act.
- Despite the above being a well settled principle of law, the Hon'ble Court thought it appropriate to counter the specific legal submissions made by Respondent No.1 pertaining to the territorial jurisdiction. Accordingly, the Hon'ble Court opined that the judgements cited by Respondent No.1 in furtherance of its submissions would not apply to the instant case.
- Additionally, the Hon'ble Court relied upon the decision of the Hon'ble Supreme Court of India, in the case of BGS SGS SOMA JV Vs. NHPC[1] , wherein it was held that wherever there is an express designation of a "venue", and no designation of any alternative place as the "seat", combined with a supranational body of rules governing the arbitration, and no other significant contrary indicia, the inexorable conclusion is that the stated venue is actually the juridical seat of the arbitral proceeding. Accordingly, applying the aforesaid principle to the facts of the instant case, the Hon'ble Court opined that the venue of the arbitration under each of the work orders evidently being Mumbai, the seat of the arbitration would necessarily be in Mumbai as well.
- Thereafter, after relying on various previous judgements in this regard, the Hon'ble Court sought it fit to summarize the position adjudicated by the Hon'ble Court in the facts of the instant case, applying the principles obtaining from the cases discussed by it. Accordingly, the Hon'ble Court opined that under Section 11(6A) of the Act, the Hon'ble Court's review is limited to the existence of an arbitration agreement, which is present between the Petitioner and both Contesting

HSA
Viewpoint

In our opinion, the present decision of the Hon'ble Bombay High Court reaffirms the well-established principle that, in the absence of contrary indicia, the designated "venue" of arbitration is to be construed as the "seat." By applying the precedent set in *BGS SGS SOMA JV v. NHPC*, the Hon'ble Court has reinforced party autonomy in selecting the arbitration seat, thereby ensuring clarity and certainty in jurisdictional matters. Furthermore, the Court's reliance on Section 42 of the Act underscores the significance of prior proceedings in determining jurisdiction, discouraging forum shopping. This decision serves as a crucial reference for disputes involving territorial jurisdiction challenges under Section 11 of the Act, further strengthening the pro-arbitration stance of Indian courts.

[1](2020) 4 SCC 234

Respondents, with Mumbai as the agreed venue of arbitration. Furthermore, the Hon'ble Court noted that no factors displace Mumbai as the seat, nor has any other court been approached under Section 9 of the Act, which would invoke Section 42 of the Act and thereby displacing the jurisdiction of this Hon'ble Court. Additionally, the Hon'ble Court highlighted that it had already granted interlocutory reliefs in the Section 9 Petition, and no challenge on jurisdiction has been raised therein.

- Therefore, the Hon'ble Court held that as per Section 42 of the Act, the Contesting Respondents' objection to the Hon'ble Court's jurisdiction was untenable, and therefore the Hon'ble Court appointed a former judge of the Hon'ble Court to act as the sole arbitrator to adjudicate upon the disputes between the parties.

My Preferred Transformation & Hospitality Pvt. Ltd. and Ors. Vs. Faridabad Implements Pvt. Ltd.

2025 INSC 56

Background facts

- My Preferred Transformation & Hospitality Pvt. Ltd., **(Appellant)** entered into lease agreements with Faridabad Implements Pvt. Ltd. **(Respondent)**. Eventually, disputes arose between the parties following which the Respondent initiated arbitration, resulting in an arbitral award dated February 4, 2022, in its favor.
- Under Section 34(3) of the Arbitration Act, the Appellant was required to challenge the award before the High Court within three months (by May14, 2022), with a possible condonable extension of 30 days.
- However, in light of the Supreme Court's COVID-19 orders, the limitation period was automatically extended to May 29, 2022. The additional 30-day condonable period expired on June 28, 2022, which fell during the High Court's summer vacation.
- The Appellant filed its application on July 04, 2022, the first working day after the court reopened. However, the High Court dismissed the challenge to the award as being barred by limitation, and the Division Bench upheld this decision.
- Being aggrieved by the decision, the Appellant approached the Hon'ble Supreme Court (**SC**).

Issue(s) at hand?

- Do the provisions of the Limitation Act apply to proceedings under Section 34 of the Arbitration Act, and to what extent?
- Does Section 4 of the Limitation Act apply to Section 34(3) of the Arbitration Act as per an analysis of the statutory scheme as well as precedents of this Court on the issue? If Section 4 applies, does it apply only to the 3-month limitation period or also the 30-day condonable period?
- In light of the answer to Issue 2, will Section 10 of the General Clauses Act apply to Section 34(3) of the Arbitration Act, and if so, in what manner?

Findings of the Court

- At the outset, the SC analyzed Section 34(3) of the Arbitration Act alongside the Limitation Act and the General Clauses Act, focusing on the applicability of Sections 4 and 10 of the respective statutes. SC first examined Section 4 of the Limitation Act, which applies only to the prescribed period under Section 34(3) of the Arbitration Act, i.e., the initial three-month limitation period. The SC was of the view that the additional 30-day condonable period is discretionary and not part of the prescribed period, thereby excluding the applicability of Section 4.
- Further, the SC assessed other provisions of the Limitation Act and affirmed that Section 12, which allows the exclusion of time spent obtaining certified copies, applies to Section 34 proceedings, thereby permitting its exclusion from the three-month limitation period. Similarly, Section 14, which excludes time spent pursuing a remedy in good faith before the wrong forum, was also deemed applicable.
- However, Section 17, which delays the start of limitation in cases of fraud or mistake, was held inapplicable, as the limitation under the Arbitration Act begins strictly upon receiving the arbitral award and cannot be extended on such grounds.
- The SC reiterated that the Arbitration Act aims to ensure the finality of arbitral awards and restrict judicial interference. SC reaffirmed past decisions in *Assam Urban Water Supply and Sewerage Board vs. Subhash Project*[1] and *Bhimashankar Sahakari Sakkare Karkhane Niyamita vs. Walchandnagar Industries Limited*[2] to conclude that, while the Limitation Act generally applies to arbitrations under Section 43(1) of the Arbitration Act, the stringent wording of Section 34(3) ("but not thereafter") impliedly excludes Section 4's application to the 30-day condonable period.
- Lastly, the SC held that Section 10 of the General Clauses Act does not apply to the Arbitration Act, as its proviso explicitly excludes proceedings governed by the Limitation Act, including Section 34(3) challenges.
- In view of the above, the SC in light of earlier decisions, dismissed the appeal, affirming that the petition filed under Section 34 was filed beyond the permissible limitation period.

In The High Court of Judicature at Bombay Ordinary Original Civil Jurisdiction

HSA
Viewpoint

The SC rightly criticized the restrictive interpretation of Section 34(3) of the Arbitration Act and the implied exclusion of Section 4 of the Limitation Act. It emphasized that limitation laws should be clear and objective, not left to judicial interpretation, to ensure accessibility for litigants. While the SC strictly enforced the absolute outer limit of the 30-day condonable period, even when it expired during court vacation, it also acknowledged the need for legislative reform. This ruling, relying on precedents like Bhimashankar case, underscores how rigid procedural constraints can deny substantive justice. To maintain arbitration's credibility as an effective dispute resolution mechanism, statutory clarity is essential to balance procedural rules with equitable relief.

[1] Civil Appeal No. 2014 Of 2006
[2] (2023) 8 SCC 453

Systra MVA Consulting (India) Pvt. Ltd. (Petitioner) Versus Mumbai Metropolitan Region Development Authority (Respondent)

Background facts

- The Mumbai Metropolitan Region Development Authority (MMRDA) ("**Respondent**") published a tender notice for the appointment of a General Consultant for three Metro lines in Mumbai. Systra MVA Consulting (India) Pvt. Ltd. ("**Petitioner**") won the contract with a bid and was issued a Letter of Acceptance (LOA) by MMRDA. Originally set for a duration of 42 months, the contract was later extended for a further period. Thereafter, Petitioner sought extension of term of contract, which was granted by the Respondent and the term of the contract was accordingly extended.
- On 3 January 2025, the Respondent issued a termination notice to the Petitioner, unilaterally cancelling the contract without providing any justification. In response, Petitioner contested this abrupt termination and filed a Petition before the Bombay High Court ("**HC**") under Article 226 of the Constitution pleading judicial review and seeking to quash the impugned notice.
- The Petitioner contested that the Respondent's decision breached principles of fairness and reasonableness enshrined in Article 14 of the Constitution. Further, it stated that the absence of any stated reasons in the termination notice rendered it legally untenable. It also contested that the existence of an arbitration clause does not preclude judicial review when the termination is arbitrary.
- The Respondent cited Clause 2.8.1(f) of the contract, which according to the Respondent granted it absolute discretion to terminate without providing reasons.

Issue(s) at hand?

- Whether State or its instrumentality is immune from satisfying public duty, when acting under private law laid down in its contractual scope?
- Whether a court can issue writs to correct contractual wrongs committed by the State to ensure fairness, reasonableness and equity?
- Whether the court is precluded from exercising judicial review, if the contract refers to alternate remedy in case any dispute arises?

Findings of the Court

- The HC ruled that MMRDA's unilateral termination of the contract without justification was arbitrary, unfair, and unreasonable. While contractual terms may permit termination at discretion, the court emphasised that such power cannot be exercised in a dishonest, capricious, or unreasonable manner, particularly by a public authority. The court took a note of Clause 2.8.1 (f) of the General Conditions of Contract and rejected its interpretation to mean that Respondent has the license to act arbitrarily without assigning any reasons.
- Consequently, the contract's termination without valid justification was deemed an abuse of discretion by MMRDA. The court observed that a court has the power of judicial review even if the Respondent has acted accordance with the contractual terms to ensure reasonableness, fairness, natural justice and non-discrimination in the nature of the dealing.
- In response to the Respondent's contention that the parties should have been referred to arbitration as provided for in the contract, the court observed that judicial review is applicable when a State action is arbitrary. The court relied on the Apex Court's ruling in ***MP Power Management Co. Ltd. v. Sky Power Southeast Solar India Pvt. Ltd.***,[1] the Court reiterated that even contracts not governed by statute, when entered into by public authorities, remain subject to judicial examination in case they are arbitrary. The court noted that it is not barred from exercising the power of judicial review merely on the ground of availability of alternate remedy as contested by the Respondent. The Court also relied on the Apex Court's ruling in ***Subodh Kumar Singh Rathour v. Chief Executive Officer***[2], wherein it was held that the cancellation of public tenders without valid justification is open to judicial review.
- The court further held that a public authority cannot arbitrarily terminate a contract, especially when public interest and taxpayer money are involved. It also noted that a speaking order of the Respondent was not in place which further signified that the termination was unreasonable.
- The impugned notice dated 3 January 2025 was quashed and set aside. The court directed the Respondent to take a fresh decision regarding the continuation or termination of the Petitioners contract after hearing it.

HSA
Viewpoint

The ruling underscores the obligation of the State to maintain fairness, reasonableness and equitability in contractual settings. The court rightly held that even if there is an arbitration clause or alternate remedy available in the contract, judicial review can be exercised if the termination of a contract is done in an unfair and unreasonable manner. By quashing the impugned notice, the judgment clarifies that state bodies cannot exercise contractual discretions in an arbitrary manner. The court has rightly directed the Respondent to reconsider its decision of unilateral termination of the contract, post hearing the Petitioner and passing a reasoned order justifying the same.

[1] 2023 SCC OnLine SC 703
[2] 2024 SCC OnLine SC 1682

In the Supreme Court of India

DLF Ltd. (formerly known as DLF Universal Ltd.) & Anr. (Appellant) Vs KONCAR Generators & Motors Ltd. (Respondent)

2024 INSC 593

Background facts

- DLF LTD. (formerly known as DLF Universal Ltd.) ("**Appellant**"), entered into a contract with Koncar Generators & Motors Ltd ("**Respondent**"), a Croatian company, for the design, engineering, manufacturing and supply of two generators.
- Several disputes arose between the parties which were referred to arbitration before the International Chamber of Commerce (ICC) in Paris. On May 12, 2004 the arbitral tribunal issued an award in favour of the Respondent, holding the Appellants jointly and severally liable to pay Euros 10,93,989/- along with interest.
- During the enforcement and execution proceedings in India, the Appellants made part payments pursuant to various court orders. These payments included INR. 7.5 crores deposited on October 22, 2010, and an additional INR 50 lakhs on July 15, 2011, bringing the total deposited amount to INR 8 crores, along with accrued interest.
- The Respondent sought enforcement in 2004, while the Appellants challenged the award under Section 34 of the Arbitration and Conciliation Act, 1996 ("**the Act**"), but their petition was dismissed in 2010.
- The Appellants then filed objections under Section 48 and Section 37 appeal under the Act, which the High Court dismissed in October 2010, directing them to deposit INR. 7.5 crores.
- The Appellants' objections under Section 48 of the Act were dismissed in 2011, and their revision was ultimately rejected in 2014, making the award final.
- The Trial Court allowed execution, and by 2016, the Respondent withdrew INR. 11.6 crores, including interest.
- A dispute arose over the applicable exchange rate for converting the award amount into Indian rupees, with the Trial Court and High Court applying the rate as of July 1, 2014.
- Additionally, they sought clarification on the exchange rate to be applied to the residual amount still owed under the arbitral award.
- The matter was brought before the Supreme Court of India, which was tasked with determining the appropriate exchange rate for both the Deposited Amount and the outstanding balance payable by the Appellants.

Issue(s) at hand?

- What is the correct and appropriate date to determine the foreign exchange rate for converting the award amount expressed in foreign currency to Indian rupees?
- What would be the date of such conversion, when the award debtor deposits some amount before the court during the pendency of proceeding challenging the award?
- When does a foreign arbitral award attain finality for enforcement, and how does this impact the exchange rate determination?

Findings of the Court

- The Supreme Court reaffirmed the principles from the *Forasol Case*[1], holding that under the Act, a foreign arbitral award becomes enforceable once objections are dismissed as per Section 49. Therefore, the appropriate date for currency conversion is when objections are finally resolved.
- Since this deposit was made with party consent and was available for withdrawal against a bank guarantee, the Court held that the exchange rate applicable on the deposit date, i.e. October 22, 2010 should apply.
- As this deposit was made pursuant to a court order and was only accessible after the resolution of objections, the Court applied the exchange rate as of the final adjudication date i.e. July 1, 2014.
- The Court drew parallels with the *Renusagar Case*[2], where deposits were made while objections were pending, and the award holder failed to take steps for conversion or withdrawal. It reaffirmed that deposits should be converted at the rate prevailing on the deposit date.
- The Court upheld that Indian law governs the date of conversion and reiterated that once a decree-holder can access a deposited amount, interest ceases to accrue, as per the Civil Procedure Code, Order 21, Rule 1 and Order 24.

HSA
Viewpoint

The Supreme Court's ruling in this case established a clear and consistent framework for converting foreign currency awards into Indian Rupees, aligning with the principles from the *Forasol case* and *Renusagar case*. By setting the conversion date as the point when objections are resolved, the ruling ensured a sense of predictability for both creditors and debtors. The distinction between deposits made voluntarily i.e. converted on the deposit date and those made under court orders i.e. converted on the objection resolution date will prevent undue advantage from currency fluctuations. This approach will enhance the fairness and efficiency of arbitral award enforcement in India, reducing disputes over exchange rates and strengthening confidence in India's arbitration framework.

[1]Forasol V. Oil and Natural Gas Commission [1984] 1 SCR 526 :(1984) Supp SCC 263
[2]Renusagar Power Co Ltd V. General Electric Co [1993] Supp. 3 SCR 22 : (1994) Supp 1 SCC 644

- The Supreme Court held that the INR. 7.5 crores deposit should be converted at the exchange rate prevailing on October 22, 2010, as it was made with party consent and available for withdrawal against a bank guarantee. The INR. 50 lakhs deposit, made pursuant to a court order and only accessible after the resolution of objections, should be converted at the exchange rate as of July 1, 2014. The remaining balance of the arbitral award, after adjusting these deposits, should also be converted at the exchange rate prevailing on July 1, 2014, the date when objections to enforcement were finally dismissed.
- Thus, the dispute was settled by aligning the conversion dates with the principles established in *Forasol Case* and *Renusagar Case*, ensuring fairness in enforcing foreign arbitral awards.

HSA

AT A GLANCE

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