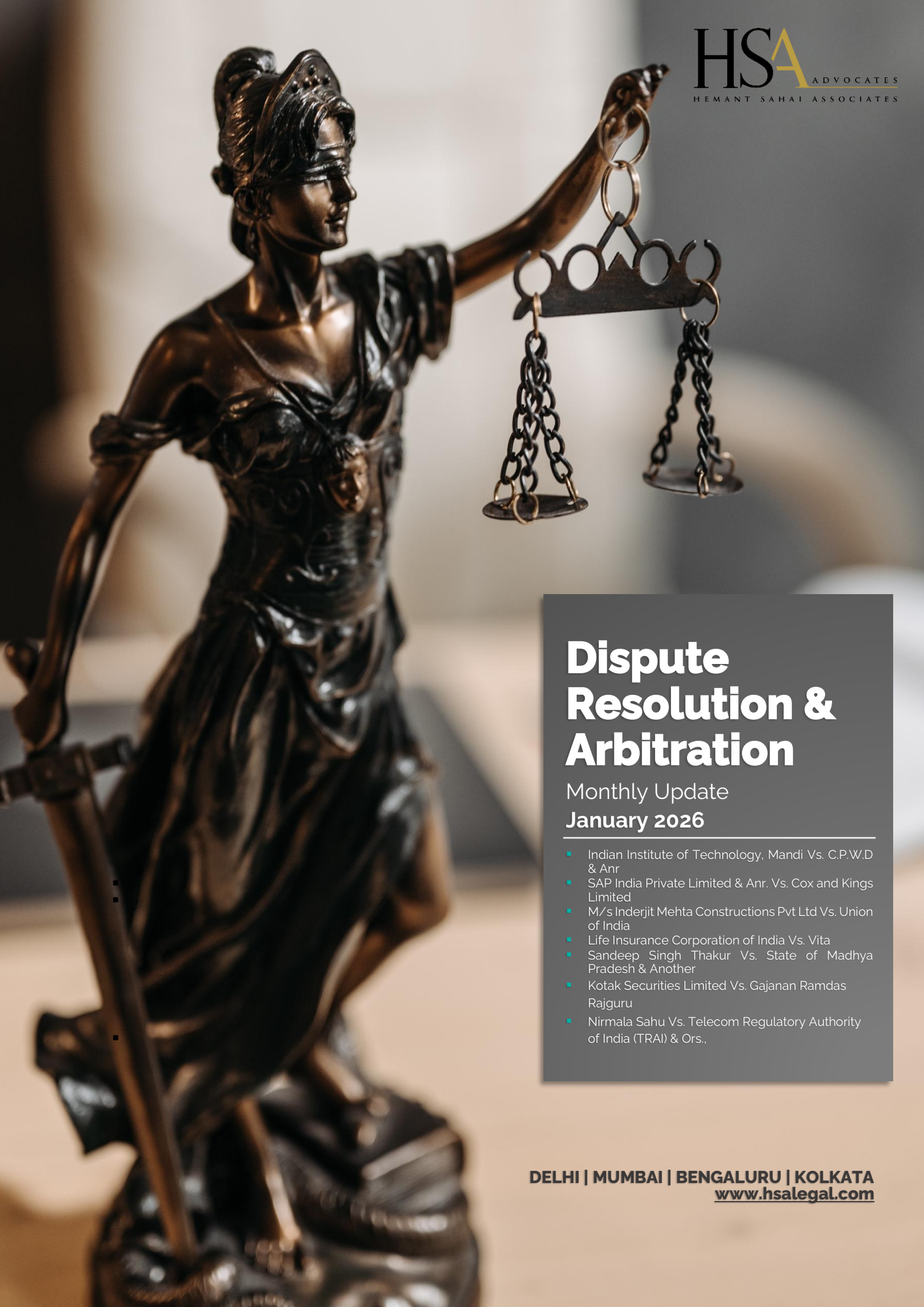

HSA ADVOCATES
HEMANT SAHAI ASSOCIATES

Dispute Resolution & Arbitration

Monthly Update

January 2026

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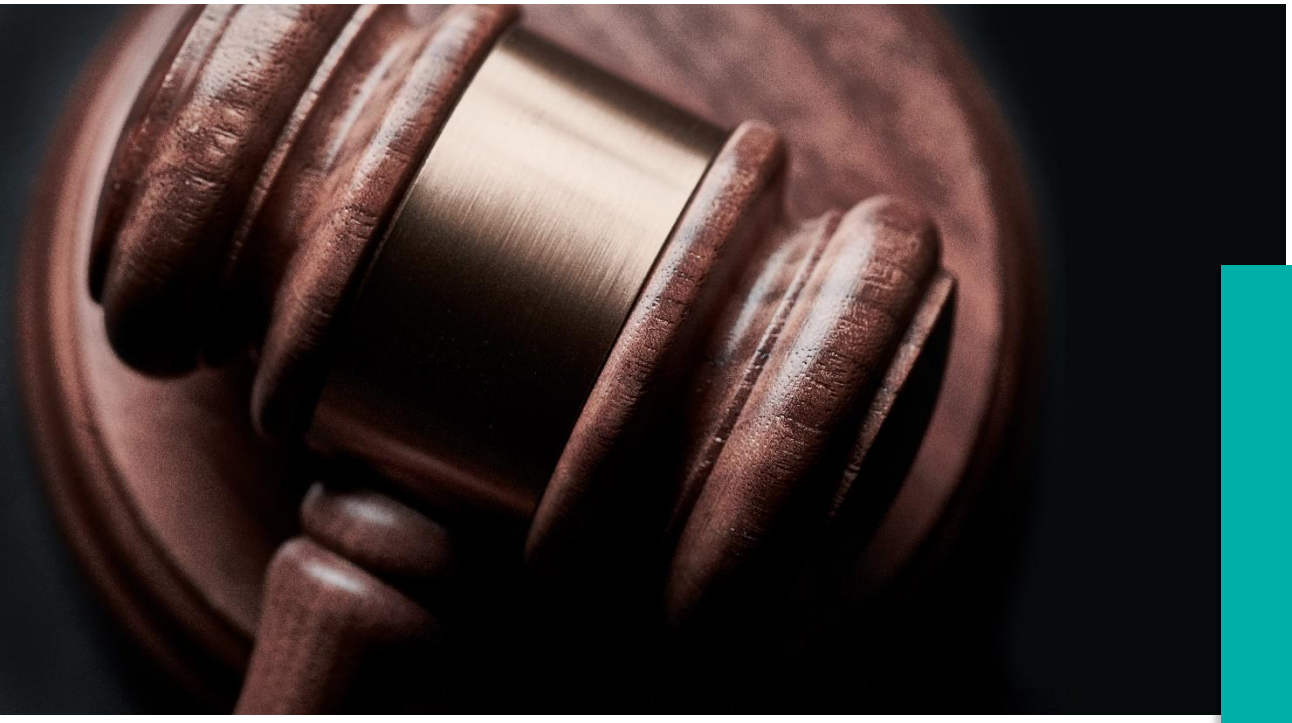
DISPUTE RESOLUTION AND ARBITRATION UPDATE



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Indian Institute of Technology, Mandi Vs. C.P.W.D & Anr

2025:HHC:45660

Background facts

- The Respondents, Central Public Works Department (Respondent No. 1) and M/s. Supreme Infrastructure India Limited (Respondent No. 2), are parties in an ongoing arbitration. The Petitioner had filed an application before the Ld. Arbitrator to be impleaded as a respondent in the said arbitration. The said application was rejected by the Ld. Arbitrator vide their order dated 18th April 2025 ('**Impugned Order**'). In the instant case, the Petitioner is challenging the Impugned Order.
- A Memorandum of Understanding ('**MOU**') was executed on 25th August 2011 between Petitioner and Respondent No. 1 whereby the Respondent No. 1 was to carry out construction work of academic and residential complex for the Petitioner. Clause 8 of the MOU states that the disputes between the parties will be referred to arbitration.
- Respondent No. 1 floated tenders for engaging contractors to perform the said construction work and Respondent No. 2's bid was accepted on 25th October 2013. Pursuant to such acceptance, an agreement was executed between the Respondents ('**Agreement**') containing the terms and conditions for the work. The said Agreement also provided for disputes to be resolved by arbitration.
- Accordingly, when disputes arose between the Respondents, Respondent No. 2 initiated arbitration proceedings against Respondent No. 2. Thereafter, as the proceedings were enduring, the Petitioner filed the application for being joined as a respondent. In the application, it was contended that the Petitioner was a necessary party and had substantial interest in completion of the project. Any award against Respondent No. 1 would impact the Petitioner, therefore they had a direct interest in the arbitration. Respondent No.2 on the other had opposed the application *inter alia* on the grounds that the Petitioner was neither a party nor privy to the Agreement between the Respondents and that the Petitioner was a separate entity and had not played any direct or important role in the negotiation, performance or termination of the Agreement so it was not eligible to invoke the Group Company Doctrine.
- Vide the Impugned Order, the Ld. Arbitrator found that the Petitioner did not meet the criteria necessary for a non-signatory to be added as a party and rejected their application.

Issue(s) at hand

- Whether a non-signatory can be impleaded as a party to an arbitration solely on the ground that they have a substantial interest in the outcome of the arbitration?

Findings of the Court

- With respect to the Impugned Order, the Hon'ble Court was pleased to observe, that whilst accepting that non-signatories may be made as parties to an arbitration, the Impugned Order clarified that such addition would depend on the facts of each case. In this case, the Ld. Arbitrator rejected the reliefs sought by the Petitioner *inter alia* on the grounds that: principles of a civil suit and Order 1 Rule 10 of Code of Civil Procedure, 1908 do not apply to an arbitration, there was nothing to show that Respondent No. 1 wouldn't sufficiently defend their own and Petitioner's interests, and, the Petitioner had no role in execution of the project or agreement between the Respondents. Therefore, mere substantial interest in subject matter of the arbitration was not enough to extend the benefit of arbitration agreement. The consent as well as intention to participate in an arbitration must exist at inception or atleast initial stages of the contract.
- The MOU and Agreement are two distinct and independent contracts. Petitioner is not a signatory to the Agreement and Respondent No. 2 is not a signatory to MOU. Arbitration has been invoked based on the Agreement and therefore the relationship of the Petitioner with such Agreement had to be considered.
- The Hon'ble Court referred extensively to Cox and Kings Limited v. Sap India Private Limited and Anr.[1] and ASF Buildtech (P) Limited v. Shapoorji Palonji & Co. (P.) Ltd.[2] to discuss the law relating to joining non-signatories to an arbitration. It was then reiterated that the intention of a non-signatory to be obligated under an arbitration agreement may be gathered from the circumstances and events encompassing participation of the non-signatory parties in '*negotiation, performance and termination of the underlying contract containing such Agreement*'. Circumstances such as preliminary negotiations between the parties, conduct of parties subsequent to conclusion of contract and nature or purpose of contract, may be considered to ascertain relevant intentions.
- In the present case, the Petitioner was neither conferred with nor otherwise concerned with the performance of the Agreement between Respondents. Even prior to the contract, the Petitioner was not involved in its negotiation.
- The apprehensions of Petitioner that any award against Respondent No. 1 would embolden any liability on them are also unjustified. The Agreement has no such terms and conditions where Petitioner would be made responsible for any award against Respondent No. 1.
- Even if Petitioner has substantial interest in the subject matter of the arbitration, it had failed to meet any of the criteria laid down in the Cox and King or ASF Buildtech judgments, and therefore, could not be impleaded as a party.
- In view of the above, the Hon'ble Court agreed with the reasoning of the Ld. Arbitrator and found there was no reason to interfere with the Impugned Order.

HSA
Viewpoint

he jurisdiction of an arbitral tribunal is confined and determined within the four corners of the arbitration agreement. In exceptional cases, non-signatories may be joined as parties, however, mere strangers should not be added as parties.

The Hon'ble Court, limiting its order and observations only on the short point of the Petitioner's involvement in the contract and its role in the performance and negotiation thereof, was pleased to hold that Petitioner could not be impleaded as a party.

Even if Petitioner has substantial interest in the subject matter of the arbitration, it had failed to meet any of the criteria laid down in the Cox and King or ASF Buildtech judgments, and therefore, could not be impleaded as a party.

The judgment aptly discusses and applies the scope of and principles regarding reference and joinder of non-signatories to an arbitration and holds that even substantial interest of the subject-matter of an arbitration was not enough to be impleaded as a party.

[1] (2024) 4 SCC 1
[2] 2025) 9 SCC 176

SAP India Private Limited & Anr. Vs. Cox and Kings Ltd.

2025: BHC-OS:26014-DB

Background facts

- Petitioner No. 1 and Respondent executed three interconnected agreements in 2015 namely the SAP Software and License Support Agreement – Order Form 3 ("**License Agreement**"), the Services General Terms and Conditions Agreement ("**GTC**"), and the SAP Global Service and Support Agreement - Order Form 1 ("**Services Agreement**").
- Disputes arose under the Services Agreement, leading the Petitioner No. 1 to invoke arbitration under GTC. Pursuant to an application under section 11 of the Arbitration and Conciliation Act, 1996 ("**the Act**"), an Arbitral Tribunal was constituted. In the said arbitration, the Petitioner No. 1 (as Claimant therein) sought approximately ₹17 crores, while Respondent (also Respondent therein) filed a counter-claim of ₹45.99 crores.
- The Petitioners challenged the jurisdiction of the Arbitral Tribunal under Section 16 of the Act, to hear the counter-claim, contending that the same arose from the License Agreement and the Tribunal could only adjudicate claims under Services Agreement. The License Agreement had its own separate and independent arbitration clause and mechanism which had not been invoked by the Respondent.
- Before the said section 16 application could be decided, the Respondent was admitted into Corporate Insolvency Resolution Process by an order dated 22nd October 2019, triggering a moratorium under Section 14(1)(a) of the Insolvency and Bankruptcy Code, 2016. In view of the moratorium, the arbitration proceedings were adjourned *sine die* on 5th November 2019.
- On 7th November 2019, the Respondent, through its Interim Resolution Professional, invoked arbitration afresh under the GTC and made claims aggregating to ₹942.45 crores. The Petitioners challenged the invocation of arbitration. By an order dated 9th September 2024, the Hon'ble Supreme Court, appointed an Arbitral Tribunal while expressly preserving the Petitioners' right to raise jurisdictional objections before the said Tribunal.
- On 11th October 2019, the Respondent (as Claimant therein), filed a claim for ₹45.99 crores, which the Petitioners (as Respondents therein). The Respondent thereafter filed two applications under Section 16 of the Act, alleging lack of jurisdiction and challenging the Respondent's claims as being identical to their original counter claim (as filed in the first arbitration). Both applications were rejected by the Ld. Arbitrator by their orders dated 31st March 2025 and 10th November 2025 ("**Impugned Orders**").
- The Petitioners have filed the present writ petition under Articles 226 and 227 of the Constitution, seeking to set aside the Impugned Orders on the ground of patent lack of inherent jurisdiction.

Issue(s) at hand?

- Whether the Hon'ble High Court can interfere under Articles 226/227 with interlocutory orders passed by an arbitral tribunal under Section 16 of the Act?
- Whether the arbitral tribunal had ex-facie exceeded its jurisdiction by entertaining claims allegedly arising from a different agreement with a separate arbitration framework?
- Whether the doctrine of composite commercial transactions justified the tribunal's assumption of jurisdiction over disputes arising from all three agreements?

Findings of the Court

- The Bombay High Court reiterated that writ jurisdiction to interfere with arbitral orders is extremely limited, and permissible only in rare and exceptional cases of patent illegality, perversity, or inherent lack of jurisdiction apparent on the face of the record. The precedents relied upon by the Petitioners including Punjab State Power Corpn. Ltd. v. Emta Coal Limited[1] and Deep Industries Ltd. v. ONGC[2] also confirm the said principles.
- The Court noted that the Arbitral Tribunal had examined the contractual framework and recorded a finding that the Services Agreement, License Agreement, and GTC formed a composite and integrated transaction governing the parties' relationship. The Arbitral Tribunal had also based this finding by citing and relying on Ameet Lalchand Shah v. Rishabh Enterprises[3]. Having found no infirmity with the Arbitral Tribunal's reasoning or inquiry, at this interlocutory stage, and in the absence of a final award, the Court held that it could not be concluded that the Arbitral Tribunal

[1] (2020) 17 SCC 93
[2] (2020) 15 SCC 706
[3] (2018) 15 SCC 678

had acted wholly without jurisdiction or committed patent illegality. Accordingly, the writ petition was dismissed.

HSA
Viewpoint

The judgment positively precludes premature constitutional challenges to interlocutory orders in arbitral proceedings and reiterates that a challenge could be made only in exceptional cases of manifest lack of intrinsic jurisdiction involving perversity.

The Judgement concludes that the Petitioners' statutory remedy lies in challenging the final arbitral award under Section 34 of the Act, rather than invoking writ jurisdiction during the pendency of the arbitration challenging the interlocutory order/s.

Further, by not interfering with the order of the Arbitral Tribunal and the finding that the three agreements form part of a composite arrangement, the Hon'ble Court prevented fragmentation of the dispute resolution in connected arbitration claims and enhanced commercial certainty.

M/S Inderjit Mehta Constructions Pvt Ltd. Vs. Union of India

O.M.P.(T)(COMM.)133/2025 and IA 30641/2025

Background facts

- M/S Inderjit Mehta Constructions Pvt Ltd ("Petitioner") was awarded a contract by the Union of India ("Respondent") for competition of balance for construction of dwelling units and allied services at Kirkee.
- Disputes arose between the Petitioner and Respondent under the contract, following which the petitioner invoked arbitration by sending Notice under section 21 of the Arbitration and conciliation act 1996 ("Act").
- Since the Respondent failed to reply to the Notice sent by the Petitioner for appointment of a Sole Arbitrator, the Petitioner was constrained to the Hon'ble Court for appointment of a Sole Arbitrator.
- Accordingly, this Hon'ble Court vide its order dated January 24th, 2000, appointed Mr. K.B. Rai as the Sole Arbitrator to adjudicate the dispute between the Petitioner and the Respondent.
- On March 4th, 2021, Mr. K.B. Rai passed away and subsequently on a Petition being filed by the Petitioner this Hon'ble Court appointed Justice Vikramjit Sen former judge of Supreme Court of India as the Sole Arbitrator to adjudicate the disputes between the Petitioner and Respondent in December 2021.
- The mandate of the Sole Arbitrator i.e. Justice Vikramjit Sen former judge of Supreme Court of India was to expire on July 27th, 2023, after excluding the period covered by the *suo motu* orders of the Supreme Court on account of COVID-19.
- The arbitration proceedings progressed at a slow pace due to issues relating to deposit of arbitral fees and etc. and hence the mandate of the Arbitrator was extended multiple times by the Hon'ble Court.
- On July 6th, 2024, the Sole Arbitrator heard the final arguments and reserved the matter for passing of award.
- However, the Sole Arbitrator didn't pass any awards thereafter and accordingly extension was sought for extending the mandate of the Arbitrator.
- In view of the above, this Hon'ble Court extended the mandate of the Arbitrator till September 30th 2025.
- However, since the Sole Arbitrator didn't pronounce any award till September 30th, 2025, the Petitioner filed the present Petition under Section 14, 15(2) read with Section 11(6) of the Act seeking substitution of the Sole Arbitrator and other consequential relief.
- The Respondent filed the present Interim Application seeking extension of the mandate of the Sole Arbitrator on the ground that the Sole Arbitrator vide email dated November 15th 2025 has intimated that the award was ready for pronouncement.

Issue(s) at hand?

- Whether the expiry of the mandate of the Sole Arbitrator by efflux of time necessitates substitution, or whether a further extension can be granted in view of the award being ready for pronouncement?

Findings of the Court

- The Hon'ble Court held that the judgment relied upon by the Petitioner in the case of Mohan Lal Fatehpuria vs. M/s Bharat Textiles & Ors.[1] ("Mohan Lal Fatehpuria") is not applicable to the facts of the present case, as, unlike in *Mohan Lal Fatehpuria*, the Sole Arbitrator in the present case has already concluded the arbitral proceedings and has expressly communicated that the arbitral award is ready for pronouncement.
- The Hon'ble Court further applied the principle laid down in the case of Rohan Builders (India) Private Limited vs. Berger Paints India Limited[2], where the Supreme Court held that the termination of mandate under section 29A(4) is not absolute and can be regularised by the court to preserve party autonomy and avoid wastage of effort.
- The Hon'ble Court held that substantial judicial time and effort had already been invested in the matter, and that the email dated November 15th, 2025, unequivocally demonstrated that the

[1]SLP (C) No.13759/2025
[2]2024 SCC OnLine SC 2494

arbitral proceedings had reached their terminal stage. The Hon'ble Court observed that directing substitution of the Arbitrator at such an advanced stage would result in needless duplication of effort and further delay, thereby defeating the legislative objective of expeditious dispute resolution embodied in the Act.

- In the above circumstances, the Hon'ble Court finally held that the balance of convenience lay in granting a limited extension of the Arbitrator's mandate to facilitate pronouncement of the award, rather than unsettling the proceedings by ordering substitution of the Arbitrator at the final stage.
- Accordingly, the Hon'ble Court extended the mandate of the Arbitral Tribunal till January 31st 2026 for facilitating pronouncement of award and made it clear that no further extensions will be granted.
- In view of the same, the Interim Application was allowed and the Petition field by the Petitioner was rejected.

HSA
Viewpoint

The judgment adopts a pragmatic and outcome-oriented interpretation of Section 29A of the Act, emphasising completion of the arbitral process over mechanical enforcement of timelines. The Court has rightly clarified that mere expiry of mandate of an Arbitrator does not automatically necessitate substitution of the Arbitrator.

The decision reaffirms that Courts retain discretion under Section 29A of the Act, particularly where arbitral proceedings have reached their terminal stage and the award is ready. Substitution at such a stage would lead to duplication of effort, wastage of judicial time and party resources, and erosion of confidence in arbitration. By granting a limited extension solely to enable pronouncement of the award, the Court balanced statutory discipline with the overarching objective of expeditious and effective dispute resolution.

Life Insurance Corporation of India Vs. Vita.

2025 SCC OnLine SC 2772

Background of the Disputes

- The Special Leave Petition (SLP) arises from the Bombay High Court judgment dated 20.06.2014, which quashed the City Civil Court's order upholding the eviction directed by the Estate Officer under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, ("**PP Act**").
- The matter involves conflicting decisions by benches of different strengths, necessitating resolution by a larger bench. The Appellant, Life Insurance Corporation of India (LIC), established under the LIC Act, 1956, had created a tenancy in April 1957 in favour of Respondent No.1, Vita Pvt. Ltd. In 2007, Respondent No.1 requested LIC to issue bills and receipts.
- A subsequent inspection report in 2008 noted the premises were locked for over a year and occupied by Respondent No.2, Smt. B.J. Malhoutra, whom LIC treated as a trespasser. LIC issued a notice dated 24.03.2009 under Section 108 of the Transfer of Property Act terminating the tenancy, demanding arrears and compensation, and warning of proceedings under the PP Act.
- The Estate Officer ordered eviction, which was upheld by the City Civil Court but later set aside by the High Court, leading to the present SLP.

Issue(s) at hand?

- The issue before the Supreme Court was:

  Whether the Provisions of the PP Act of 1971 prevail over the provisions of the State Rent Control Act?

Findings of the Court

- High Courts Reasoning:

  The Hon'ble Bombay High Court considered the 2-judge bench ruling in *Suhas H. Pophale v. Oriental Insurance Co. Ltd.*[1] and contrasted it with the 5-judge bench decision in *Ashoka Marketing Ltd. v. Punjab National Bank*[2]. The issue in both cases was whether the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 ("**PP Act**") would prevail over State Rent Control Acts.
- Findings in *Suhas Pophale case*:

  The Court held that the PP Act had only prospective effect, applying to premises that became public premises after enforcement of statutes such as the LIC Act, 1956 and Banking Companies Act, 1970. Tenants under private landlords prior to 1971 could not be treated as unauthorized occupants. Accordingly, the PP Act was held not to override State Rent Control Acts.
- The Court classified tenancy and legislative jurisdiction into three categories:
  - LIC premises became public premises from the enforcement of the LIC Act, 1956.
  - Banking company premises became public premises from the enforcement of the Banking Companies Act, 1970.
  - Other tenants occupying premises under private landlords did not fall within the Act, as they could not be treated as unauthorized occupants.

    It was observed that premises would qualify as government premises only after the enforcement of the respective statutes. Since tenants were holding under private landlords prior to 1971, the PP Act could not apply to them. Accordingly, the Court held that the provisions of the PP Act, 1971 did not override State Rent Control Acts.
- Contrary decision adjudicated in *Ashoka Marketing case*:
  - The 5-judge bench in *Ashoka Marketing Ltd. v. Punjab National Bank* addressed whether the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 ("PP Act") overrides State Rent Control Acts. The Court noted that Rent Control laws fall under the Concurrent List, while the PP Act is a Union List enactment and a later statute. Since the Delhi Rent Control Act was enacted earlier, the PP Act, being subsequent, must prevail.
  - The bench held that the PP Act applies even to premises otherwise governed by Rent Control legislation, and unauthorized occupants under the PP Act cannot claim protection under Rent Control laws. This interpretation ensures that eviction provisions for public premises are uniformly applied. The Court reaffirmed the ratio in *Jain Ink Manufacturing Co. v. LIC*[3], which had already established that the PP Act, as a later enactment, overrides Rent Control Acts.

[1] 2014 (4) SCC 657
[2] 1990 (4) SCC 406
[3] (1980) 4 SCC 435

- Courts Bound by Precedent and Observations in the Present Case:
  - The Court emphasized that all courts are bound by the principle of precedent, and benches of lesser strength must follow the rulings of larger benches. It held that the 2-judge bench in *Suhas Pophale* acted contrary to law by disregarding the binding ratio laid down by the 5-judge bench in *Ashoka Marketing*. No smaller bench can adopt a view inconsistent with a larger bench, and adherence to *stare decisis* is mandatory.
  - Accordingly, the Court reaffirmed the ratio in *Ashoka Marketing*, holding that the provisions of the PP Act, override State Rent Control Legislations. In matters of eviction under Section 2(g), the legislative intent and purpose of the PP Act prevail. The Court affirmed that the Act applies to all premises, whether created before or after its enforcement, provided two conditions are met: (i) the premises fall within Section 2(e), and (ii) the occupation is unauthorized.
  - Thus, the Court upheld *Ashoka Marketing* and expressly overruled *Suhas Pophale*, reiterating that every court is bound by the principle of *stare decisis*.

HSA
Viewpoint

The judgement stands as a significant judicial pronouncement highlighting the principle of precedents and *stare decisis*. The Court has taken into consideration the facts of cases decided by two different benches of different strength and has contended that the courts are required to adhere to the law set by the higher court or a bench of a larger strength.

Moreover, the court has settled the position of law with regards to overriding effect of the PP Act and State Rent Control Legislations and correctly held that the provisions of the PP Act override the provisions of the State Rent Control Act.

Sandeep Singh Thakur Vs. State of Madhya Pradesh & Another

2025 SCC OnLine SC 2927

Background facts

- The appellant and the prosecutrix became acquainted in 2015 through a social media platform. A mutual liking developed and both entered into a consensual physical relationship. The prosecutrix later alleged that such relationship occurred on the basis of the appellant's promise to marry her.
- Upon the appellant not fulfilling the promise to marry, the prosecutrix lodged an FIR No. 29 of 2021 dated 02.11.2021 at Women Police Station, District Sagar, alleging offences under Sections 376 and 376(2)(n) IPC. Charge sheet was filed on 08.02.2022.
- The trial was conducted in Sessions Trial No. 191 of 2022 before the Additional Sessions Judge, Sagar. The appellant was convicted under Sections 376(2)(n) and 417 IPC and sentenced to rigorous imprisonment of ten years with fine of Rs. 50,000 for Section 376(2)(n), and rigorous imprisonment of two years with fine of Rs. 5,000 for Section 417 IPC.
- Aggrieved by conviction, the appellant preferred Criminal Regular Appeal CRA No. 4869 of 2024 before the Madhya Pradesh High Court, Jabalpur. In the said appeal, I.A. No. 9352 of 2024 seeking suspension of sentence was rejected on 05.09.2024.
- The appellant thereafter approached the Supreme Court challenging refusal of suspension of sentence. During hearing, the Court interacted with both parties and their parents. Both expressed willingness to marry. Interim bail was granted, and marriage was solemnised on 22.07.2025. They began living together thereafter.
- In light of these developments, the Supreme Court invoked Article 142 of the Constitution to do complete justice, leading ultimately to quashing of conviction, sentence and proceedings.

Issue(s) at hand?

- "Whether in the facts of the case, in view of subsequent marriage between the appellant and prosecutrix and their living together, the criminal proceedings, conviction and sentence for offences including Section 376(2)(n) IPC should be quashed by invoking Article 142 of the Constitution of India."

Findings of the Court

- The Court noted that the case represented a situation where a consensual relationship between two adults was subsequently given a criminal complexion. According to the Court, insecurity arising from postponement of marriage by the appellant likely led to filing of the criminal complaint.
- During pendency of appeal, the Court interacted personally with the parties and their parents in chambers on multiple dates and allowed time for them to confer. Ultimately, both parties unequivocally expressed willingness to marry, and marriage was in fact solemnised on 22.07.2025.
- Orders dated 06.05.2025, 15.05.2025 and 25.07.2025 recorded their willingness to marry, the grant of interim bail, solemnisation of marriage and stay of conviction to enable reinstatement in service.
- Considering that the parties were now married, residing together happily, and the prosecutrix herself desired that criminal proceedings be quashed, the Court held that continuation of the criminal process would not serve the ends of justice.
- The Supreme Court, therefore, invoked its plenary powers under Article 142 to quash FIR No. 29 of 2021, the judgment of conviction and sentence dated 12.04.2024 of the I Additional Sessions Judge, Sagar, and consequential proceedings.
- As a result, the pending appeal CRA No. 4869 of 2024 before the Madhya Pradesh High Court was rendered infructuous.
- The Court also directed the Chief Medical Officer, Sagar, to revoke the suspension of the appellant from service and to release arrears of salary within two months, as the appellant had rejoined duty after revocation of suspension.

HSA
Viewpoint

Indeed, the extent of the judgment seems to be an assessment of a judicial sensitivity to the phenomenon of consensual relationships that may evolve into a legal one due to insecurity or postponement of marriage based on emotional insecurity. This seems to reflect an understanding that not all legal tussles between consenting adults will solidify in terms of criminal records.

The judgment represents a conscious exercise of Article 142 to prevent mechanical continuation of prosecution where the parties themselves have resolved their dispute through lawful marriage and are living together. Through the decision that favours the autonomy of the adult individuals involved and is grounded in the reality that exists as a result of their choices, which is that justice is not just about assigning guilt but is also about restoring social integrity where restoration is genuinely true.

The decision balances personal autonomy, subsequent reconciliation, and the paramount objective of delivering complete justice, rather than being imprisoned in rigid procedural formalism. On a balance, there appears to be support for a view of justice as restorative and future-focused, as opposed to punitive, while at the same time tacitly recognizing that this is an unusual approach, rooted as it is in the circumstances surrounding reconciliation and voluntary marriage.

Kotak Securities Limited Vs. Gajanan Ramdas Rajguru

2025 SCC OnLine Bom 4891, Judgment dated 03 December 2025

Background facts

- Kotak Securities Limited ("**Petitioner/Kotak**") is a registered trading member of the National Stock Exchange ("**NSE**") and the Bombay Stock Exchange ("**BSE**") in the cash and derivative segments. Petitioner/Kotak is also a depository participant with Central Depository Services Limited ("**CDSL**") and National Securities Depository Limited ("**NSDL**").
- Gajanan Ramdas Rajguru ("**Respondent**") opened a trading account with Petitioner/Kotak in October 2021 and thereafter, regularly executed trades, including futures and options (F&O) contracts, through the Petitioner/Kotak's online trading platform.
- On 26 July 2022, the actual margin available in the Respondent's trading account was INR 3,175.69. Due to a technical glitch attributable to the Petitioner/Kotak's systems, an erroneous and inflated margin credit was reflected in the Respondent's account.
- Availing the erroneous margin, the Respondent executed F&O trades aggregating approximately INR 94.81 crores within a 20-minute window, although such trades would have required a margin of about INR 40 crores.
- The trades resulted in a profit of approximately INR 1.75 crores. A contract note dated 26 July 2022 was issued and INR 1,83,51,383.43 was credited to the Respondent's account. The Petitioner/Kotak thereafter reversed INR 1,75,01,672.92, as the trades and profits arose solely from the erroneous margin credit.
- Upon the Respondent's complaint, the Petitioner/Kotak attempted an amicable settlement by offering 50% of the profit, which did not materialise. The Respondent thereafter approached the Investor Services Cell of the NSE on 15 September 2022.
- The complaint was adjudicated by the Grievance Redressal Committee ("**GRC**") of the NSE, which, by its order dated 25 November 2022, rejected the Respondent's claim. The Respondent invoked arbitration and filed an application before an Arbitral Tribunal constituted under the NSE Regulations. The Arbitral Tribunal, by its award dated 1 June 2023, upheld the stand of the Petitioner/Kotak and dismissed the Respondent's claim.
- Thereafter, the Respondent preferred an appeal before the NSE Appellate Forum. By its final award dated 25 October 2023, the Appellate Forum set aside both the order of the GRC dated 25 November 2022 and the arbitral award dated 1 June 2023 and directed the Petitioner/Kotak to pay a sum of INR 1,75,01,672.92, along with interest at the rate of 12% per annum from 26 July 2022. Pursuant to the said award, the NSE debited an amount of INR 2,01,31,239.34 from the Petitioner/Kotak's account.
- Aggrieved by the aforesaid award, the Petitioner/Kotak filed a petition under Section 34 of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**") before the Hon'ble Bombay High Court, being Commercial Arbitration Petition No. 788 of 2024, challenging the award dated 25 October 2023 passed by the NSE Appellate Forum.
- By interim order dated 22 December 2023, the Hon'ble Bombay High Court directed the NSE to deposit the amount of INR 2,01,31,239.34 with the Court for investment, and stayed the execution of the final award dated 25 October 2023, pending adjudication of the Section 34 petition.

Issue(s) at hand?

- Whether the Respondent is entitled to the profits earned from trades executed using an erroneous and undue margin reflected in his account, owing to a glitch in Petitioner/Kotak's systems?
- Whether Sections 71 and 163 of the Indian Contract Act, 1872 can be construed to direct the Respondent to hand over the accrued profits to the Petitioner/Kotak, as per a bailor/finder-of-good's duties?
- Whether permitting the Respondents to retain the profits would amount to "unjust enrichment"?
- Whether the award should be set aside in the interest of preserving the sanctity of the risk management system and integrity of the market?

Findings of the Court

- The Hon'ble Bombay High Court (Ordinary Original Civil Jurisdiction), comprising Hon'ble Mr. Justice Sandeep V. Marne, dismissed the Petitioner/Kotak's challenge under Section 34 of the Arbitration Act, and upheld the final Award dated 25.10.2023 passed by the NSE Appellate Arbitral Tribunal.

- The Hon'ble Court rejected the Petitioner/Kotak's reliance on Section 71 (Responsibility of finder of goods) and Section 163 (Bailor entitled to increase or profit from goods bailed) of the Indian Contract Act, 1872, and held that the "margin" credited due to a technical glitch constituted money, not "goods" under Section 2(7) of the Sale of Goods Act, 1930. Accordingly, the principles of bailment or finder of goods were held inapplicable.
- The Hon'ble Court held that the technical glitch merely enabled an opportunity to trade and did not automatically confer profits. The profits were earned through the Respondent's own skill and risk, including an initial loss of approximately ₹50 lakhs which was subsequently recovered. The liability would have been of the Respondent if the losses had occurred.
- Since these trades were validly executed in exercise of the Respondent's own skill and risk, profits from these trades cannot be characterized as "unjust enrichment". If any unjust enrichment existed, it would lie with the Petitioner, which caused the system error, levied charges and statutory fees, and thereafter sought to appropriate the profits while retaining the right to recover losses in a converse situation.
- The Hon'ble Court observed that arguments founded on market integrity were undermined by the Petitioner/Kotak's conduct, including offering a profit-sharing settlement, failure to promptly invoke SEBI-prescribed risk management tools, absence of timely warnings to the Respondent, and crediting profits to the Respondent's ledger prior to reversal.
- Reiterating the limited scope of interference under Section 34, the Court held that the Appellate Tribunal had taken a plausible view, which was not in conflict with the fundamental policy of Indian law, and no patent illegality. Hence, the Respondent was directed to withdraw the deposited amount.

HSA
Viewpoint

The Judgment of Hon'ble Court is very persuasive as it correctly places the consequence of a broker-system failure on the broker. The Hon'ble Court's inferences regarding the conduct of Petitioner/Kotak, where it attempted to settle the disputes by offering a share of the profits, goes beyond mere superficial analysis of the facts and correctly understands their intention, which is an extremely valid ground to reject noble-sounding arguments of "preserving market sanctity." The ruling reinforces the principle that a party cannot benefit from its own wrongdoing. Where a broker's internal failure enables trading beyond prescribed limits, the burden of such failure cannot be selectively transferred to the client only when profits arise. Furthermore, since the profits was made entirely by the Respondent's own skill and risk undertaking, it is an intuitive conclusion that the Petitioner/Kotak should not be allowed to enjoy the benefits of such skill, and the Hon'ble Court has reached this conclusion, while grounding its reasoning in statutory interpretations of the Indian Contract Act, 1872 and the Sales of Goods Act, 1930.

Nirmala Sahu Vs. Telecom Regulatory Authority of India (TRAI) & Ors.,

W.P.(C) No. 1734 of 2016, decided on August 19, 2025)

Background facts

- In this matter, the petitioner, Nirmala Sahu, was the owner of a plot of land that had been leased to a telecom operator for setting up of a mobile communication tower.
- Following disputes over unpaid rent and the Collector's order to dismantle the tower, the petitioner approached the Orissa High Court, claiming that the dismantling order violated her ownership rights and adversely affected her economic interests.
- The Court's resolution of this conflict provides crucial insight into how Indian courts balance the competing interests of landowners and lessees under the framework of the Transfer of Property Act, 1882 ("TPA").

Issue(s) at hand?

- The principal issue before the Court was, whether the lessor (landowner) could claim ownership or legal injury in respect of a structure erected by the lessee (telecom operator) on leased land?

Findings of the Court

- The petitioner contended that, since the mobile tower was erected on her land, its removal impinged upon her ownership rights and reduced the economic value of her property.
- The Court, however, drew a clear distinction between economic interest and legal ownership. It held that the petitioner's grievance, though financially disadvantageous, amounted to damnum sine injuria—damage without legal injury. Under the TPA, the lessee, having constructed the tower with due consent, was the lawful owner of the structure. The petitioner, therefore, had no enforceable claim over the superstructure itself.
- The Court further expressly declined to apply the English common law rule quicquid plantatur solo, solo cedit, under which anything affixed to the land becomes part of the land. Citing Mulla's authoritative commentary on the TPA, the Court observed that "The lessee is the owner of the buildings put up by him on the land leased. It is now settled that the maxim, what is annexed with the soil goes with the soil, has not been accepted as the absolute rule of law of this country. A person who Bonafide puts up constructions on land belonging to others with their permission would not be a trespasser, nor the buildings so constructed vest in the owner of the land".
- Further, the Court emphasized that ownership rights in leased property must always be determined in the light of the express and implied terms of the lease agreement. In the current case, the lease deed conferred the lessee the right to install and operate telecommunication infrastructure, thereby acknowledging its ownership over the tower. The Court thus underscored that contractual clarity is significant in determining proprietary claims, particularly in leases involving construction or installation of movable or semi-permanent structures.
- In such a scenario, the Court in the matter of Nirmala Sahu v. TRAI & Ors., W.P.(C) No. 1734 of 2016 instructed the petitioner to continue prosecuting her ongoing civil suit for recovery of unpaid rent before the Civil Judge (Senior Division)/Commercial Court, Kendrapara. This distinction between contractual remedies and proprietary claims reflects a mature judicial approach that separates financial disputes from questions of ownership.
- In K.A. Dhairyawan and Others v. J.R. Thakur and Others, the lessor had leased out the land and permitted the lessee to put up a structure on it for the duration of the lease. The lease contained no clause indicating that ownership of the building erected by the lessee would revert to the lessor. Upon examining the terms of the lease, the Supreme Court held that the lessor had no claim over the structure during the subsistence of the lease, and that, under this principle, the lessee remained the owner of the building until the lease came to an end. This decision reinforces the position that a transferor can convey only those rights or interests that he actually possesses at the time of the transfer.
- Section 3(26) of the General Clauses Act, 1897 states that, the term immoveable property includes "land, benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth
- The "dual ownership" doctrine, though well-rooted in Indian jurisprudence, continues to evolve through judicial interpretation.
- As per Section 3 of the Transfer of Property Act, 1882 defines the term attached to the earth means, "(a) rooted in the earth, as in the case of trees and shrubs; (b) imbedded in the earth, as in the case of walls or buildings; or (c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached".
- It reflects the modern economic reality that land and the super structures standing upon it may be independently owned, utilised and transacted separately. This principle has found consistent

support in several judgments viz-a-viz K A Dhairyawan and others v. J R Thakur, Laxmi Enterprises v/s The Commissioner, Bruhat Bangalore Mahanagara Palike and another. and most recently it gained momentum in the Orissa High Court's ruling in *Nirmala Sahu v. TRAI & Ors.*

HSA
Viewpoint

The Orissa High Court's judgment in *Nirmala Sahu v. TRAI & Ors.* (W.P.(C) No. 1734 of 2016, decided on August 19, 2025) is a decisive reaffirmation of the doctrine of dual ownership in Indian law. It delineates the boundaries between ownership of land and ownership of structures, providing a nuanced understanding of property rights under the Transfer of Property Act. Thus, by rejecting the inflexible English rule of accession and upholding contractual autonomy, the Court has ensured that Indian property law remains adaptive to the needs of modern commerce and infrastructure development.

As India's real estate and leasing sectors grow increasingly complex, this judgment serves as an essential reference point—promoting legal certainty, commercial clarity, and equitable treatment of lessors and lessees alike.

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