



Dispute Resolution & Arbitration

Monthly Update
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- R Savithri Naidu Vs. M/s The Cotton Corporation of India Ltd and Anr.
- Parsvnath Developers Ltd. Vs. Mohit Khirbat
- Ankhim Holdings Pvt Ltd & Anr. Vs. Zaveri Construction Pvt. Ltd.
- The General Secretary, Vivekananda Kendra Vs. Pradeep Kumar Agarwalla and Ors
- Sriganesh Chandrasekaran & Ors Vs. M/s. Unishire Homes LLP & Ors.
- Thomas Varghese Vs. Sundaram Finance Ltd.

DISPUTE RESOLUTION AND ARBITRATION UPDATE



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

Civil Appeal No. of 2026 ISLP (Civil) No. 19779 of 2024 | 2026 INSC 150

Background facts

- M/s Lakshmi Ganesh Textiles Ltd ("Respondent No. 2"), initially a public company, changed to a private company on 30.06.2011. It signed a sale agreement on 22.01.1998 with the Cotton Corporation of India Ltd, Coimbatore ("CCI"/"Respondent No. 1") to buy cotton bales. A disagreement over the sale price led CCI to start arbitration (AP No. 9 of 1999) to recover Rs. 37,51,380/- along with interest and costs.
- On 11.06.2001, the arbitrator awarded Rs. 26,00,572.90/- with future interest at 18% per year and costs. Respondent No. 2 challenged this award under Section 34 of the Arbitration and Conciliation Act, 1996 in AOP No. 10 of 2006. This challenge was dismissed on 21.01.2013 and could not be appealed.
- Separately, Respondent No. 2, which defaulted on loans from ICICI Bank, faced SARFAESI proceedings starting on 11.11.2013. A tripartite agreement dated 29.12.2014 was made between ICICI Bank, Respondent No. 2, and the Appellant, R. Savithri Naidu. She is the mother of the Managing Director and the wife of a former director of Respondent No. 2. She also served as a non-executive director from 2007 to 2012. Following this agreement, a registered sale deed dated 23.04.2015 was executed by Respondent No. 2 in favour of the Appellant concerning certain properties (the "EP Schedule Properties").
- On 16.07.2019, CCI filed an Execution Petition (EP No. 300 of 2019) in the Court of Principal District Judge, Coimbatore, to enforce the 2001 arbitral award. The EP was moved to Tirupur. On 19.08.2021, the executing court ordered conditional attachment of the EP Schedule Property. The Appellant filed EA No. 141 of 2021 under Order XXI Rule 58 of the Civil Procedure Code, 1908 ("CPC"), claiming to be a genuine third-party buyer for valid consideration and without awareness of any existing liability. The court dismissed the claim petition on 03.01.2022, and the revision (CRP No. 469 of 2022) in the Madras High Court was also dismissed on 12.07.2024, leading to the current appeal before the Supreme Court.

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Issue(s) at hand

- Whether the Appellant qualifies as a bona fide purchaser for value without notice, entitled to resist attachment in execution of the arbitral award.
- Whether the Appellant is a transferee pendente lite barred by Order XXI Rule 102 CPC from objecting to the attachment.
- Whether the doctrine of lis pendens extends to money decrees and arbitral awards in respect of post-award transfers of immovable property.
- Whether non-production of the tripartite agreement attracts an adverse inference against the Appellant's plea of purchase without notice.

Findings of the Court

- The Supreme Court dismissed the appeal, affirming the courts below on four grounds.
- First, on the question of notice, the Court held that while no definitive finding of fraud was recorded, the non-production of the tripartite agreement, the foundational document for the sale deed, warranted an adverse inference. Given the Appellant's close familial connection with Respondent No. 2's management, the plea of purchase without notice could not be sustained.
- Second, on Rule 102, the Court held the Appellant to be a transferee pendente lite. Since the arbitral award constitutes a deemed decree under Section 36 of the Arbitration and Conciliation Act, 1996, and the proceedings were instituted in 1999, the 2015 transfer fell squarely within the bar. The Court rejected the argument that no litigation was pending after the Section 34 challenge concluded in 2013, clarifying that Rule 102 operates from the institution of the original arbitral proceedings, not from any interlocutory challenge. Relying on *Usha Sinha v. Dina Ram*¹.
- Third, on lis pendens, the Court followed *Danesh Singh v. Har Pyari*², affirming that Section 52 of the Transfer of Property Act, 1882 is not limited to suits concerning specific immovable property and equally governs money suits and arbitral awards. A judgment debtor cannot defeat a decree by alienating property after the award is passed but before it is realised.
- Fourth, the Court emphasised the systemic imperative of decree enforcement, invoking *Jini Dhanrajgir v. Shibu Mathew*³ and cautioning that permitting surrogate objectors to derail execution proceedings would reduce hard-won decrees to mere paper tigers. The executing court was directed to conclude proceedings within two months.

HSA Viewpoint

This judgment fortifies decree holders' rights by closing loopholes in Order XXI Rule 102 and extending lis pendens to money decrees and arbitral awards.

The Court's practical reading of Section 52 ensures execution delivers real relief, not just formal decrees.

The adverse inference from the missing tripartite agreement highlights the need for rigorous due diligence, especially in transactions involving associates of judgment debtors. Buyers must now check for pending arbitration and unresolved awards.

By prioritizing substantive justice and setting a two-month execution timeline, the Court signals reform in execution processes and reinforces that justice must be effective, not merely symbolic.

¹ (2008) 7 SCC 144

² (2025 INSC 1434)

³ (2023) 20 SCC 76

Parsvnath Developers Ltd. Vs. Mohit Khirbat

2026 INSC 170

Background facts

- The Respondents in the three connected appeals had booked residential apartments in the Parsvnath Exotica project at Sector 53, Gurgaon and had paid nearly the entire sale consideration therefor. The Appellant failed to complete the project and hand over possession within the stipulated period in the flat buyer agreements.
- The Respondents were accordingly constrained to file consumer complaints before the National Consumer Disputes Redressal Commission (“NCDRC”) against the Appellant. By the orders dated 30.07.2018, and 21.11.2019 (“Impugned Orders”), the NCDRC directed the Appellant to *inter alia* complete construction, hand over possession upon obtaining the Occupancy Certificate, and pay compensation by way of simple interest at 8% per annum from the respective cut-off dates till actual delivery of possession, in addition to rebate, stamp duty differential, and litigation costs.
- Aggrieved by the Impugned Orders, the Appellant preferred the subject appeals before the Supreme Court, primarily contending that the NCDRC had exceeded its jurisdiction by granting reliefs beyond the scope of Section 14 of the Consumer Protection Act, 1986 (“CPA, 1986”) and the contractual terms, in particular Clause 10(c) of the Flat Buyer Agreement, which prescribed a fixed and limited rate of delay compensation.
- It is pertinent to note that the Appellant had been granted several extensions by the Hon’ble Court to obtain occupation certificate and hand over possession but the same was not complied with.

Issue(s) at hand?

- Whether the NCDRC exceeded its statutory jurisdiction under Section 14 of the CPA, 1986 by awarding compensation in excess of the rate stipulated under Clause 10(c) of the Flat Buyer Agreement?
- Whether failure to obtain an Occupancy Certificate constitutes a deficiency in service, and whether a developer can compel a purchaser to accept possession without such certificate?
- Whether a contractual clause can curtail the statutory jurisdiction of the consumer fora to award just and reasonable compensation for deficiency in service?

Findings of the Court

- On the jurisdictional challenge, the Hon’ble Court unequivocally held that the jurisdiction of consumer fora is traceable to the statute and not to the contract between the parties. Sections 12 and 22 of the CPA, 1986 empowered the NCDRC to adjudicate complaints relating to deficiency in service and to grant appropriate reliefs and the scope of such reliefs is extensive. Such power cannot be curtailed by contractual terms.
- The Hon’ble Court, placing reliance on *Lucknow Development Authority v. M.K. Gupta*¹, reaffirmed that housing construction falls within the ambit of ‘service’ under Section 2(1)(o) of the CPA, 1986, and that the term ‘compensation’ carries a wide amplitude, extending to pecuniary loss, mental agony, and harassment occasioned by deficiency in service. As regards the Occupancy Certificate, placing reliance on *Samruddhi Cooperative Housing Society Ltd. v. Mumbai Mahalaxmi Construction (P) Ltd*², the Hon’ble Court categorically held that failure to obtain the Occupancy Certificate constitutes a deficiency in service, and that a purchaser cannot be compelled to accept possession in the absence of such mandatory statutory approval. An offer of possession without the requisite certificate is legally untenable.
- Clause 10(c) prescribed a nominal delay compensation of merely Rs. 10 per sq. ft. per month, whilst Clause 5(b) empowered the developer to charge interest at 24% per annum for delayed payments by the allottee. The Hon’ble Court opined that the terms of the Flat Buyer Agreement were evidently one-sided and favouring the Appellant. Placing reliance on *Pioneer Urban Land & Infrastructure Ltd. v. Govindan Raghavan*³, the Hon’ble Court held that the incorporation of such one-sided and oppressive terms in a standard form contract, where purchasers have little or no bargaining power, constitutes an unfair trade practice under Section 2(1)(r) of CPA, 1986 and cannot restrict the NCDRC from awarding higher compensation especially where enforcing the contractual term will lead in manifest injustice.
- On the question of quantum of relief in cases of delayed or failed delivery of possession, the Hon’ble Court distilled the governing principles from *Bangalore Development Authority v.*

¹ (1994) 1 SCC 243

² (2022) 4 SCC 103

³ (2019) 5 SCC 725

*Syndicate Bank*⁴ reiterating that compensation must be fair, reasonable, and proportionate to the delay, deprivation, and hardship established on record — and cannot follow a rigid or formulaic pattern. Detailed mathematical ascertainment of market decline is not a *sine qua non*; what is required is that the award be just and proportionate to the facts established and the compensation under CPA, 1986 is corrective. NCRDC had engaged in that exercise, ascertained impact on consumers and accordingly decided the compensation.

- As regards the ancillary reliefs, the Hon'ble Court held that the NCDRC's directions relating to rebate, litigation costs, and stamp duty differential were incidental and ancillary to the main relief of compensation and fell squarely within the ambit of Section 14 of CPA, 1986. The said provision enables the fora to issue such directions as necessary to remove deficiencies and to adequately compensate the consumer for loss or injury caused by the opposite party. Such directions did not suffer from any perversity or jurisdictional error warranting interference.

HSA Viewpoint

The Hon'ble Supreme Court dismissed all three appeals and affirmed the orders of the NCDRC in their entirety. The Appellant was directed to obtain the requisite Occupancy Certificate and hand over possession to the Respondents and continue to pay compensation in the interim.

By relying on settled case laws and exemplifying the scope of section 14, this affirmed the robust protective framework available to homebuyers under the CPA, 1986.

Three critical takeaways emerge from this ruling:

- First, the jurisdiction of consumer fora to award just and reasonable compensation for deficiency in service is statutory in character and cannot be fettered by contractual terms if it is to the detriment of the consumer.
- Second, standard form builder-buyer agreements containing disproportionate and one-sided obligations that impose stringent penalties on the buyer for defaults whilst insulating the developer from meaningful liability for delays constitute an unfair trade practice under CPA, 1986.
- Third, the delivery of possession without an Occupancy Certificate is legally untenable. A developer cannot compel a purchaser to accept possession in such circumstances, and such failure constitutes an independent deficiency in service for which compensation may be awarded. Ancillary consequences of the developer's delay, such as the escalation in stamp duty, are equally within the remedial jurisdiction of the consumer fora under Section 14 of CPA 1986 and are rightly visited upon the defaulting developer.
- In view of the above, given the wide ambit of the consumer fora's jurisdiction, it is advisable that developers do not have one sided agreements tilting the balance of convenience in their favour to the detriment of the interest of the purchaser.

⁴ (2007) 6 SCC 711

Ankhim Holdings Pvt Ltd & Anr. Vs. Zaveri Construction Pvt. Ltd.

2026 SCC OnLine SC 170

Background facts

- The Appellants and the Respondent formed a partnership firm, *M/s Anmol Alliance*, for development of an SRA project in Mumbai. Disputes arose between the parties, Appellants filed petition under section 9 of Arbitration and Conciliation Act, 1996 (hereinafter "Act") in Hon'ble High Court for necessary interim relief. Pending the said application, an interim arrangement was worked out between the parties.
- On 09.07.2019, the Hon'ble Court recorded the above arrangement in its order as 'consent terms' between the parties and appointed Hon'ble Mr. Justice J.N. Patel as Ld. Arbitrator.
- Pending the arbitration, on 26.09.2019, the Hon'ble NCLT Mumbai admitted the Respondent to CIRP and a moratorium under section 14 of the Insolvency and Bankruptcy Code ("IBC") took effect.
- Pertinently, the arbitration proceedings continued and hearings were held between 26.09.2019 and 26.08.2022. During the said hearings, on 25.03.2022 the Respondent preferred a section 16 application under the Act challenging the jurisdiction of the Ld. Arbitrator on account of the moratorium. The said application was rejected vide an order of 29.03.2022. Vide a separate orders of the 29.03.2022 and 20.04.2022, the Ld. Arbitrator also allowed a section 17 application filed by the Appellants to sell some of the flats constructed in the SRA project.
- Pursuant to the abovementioned orders, the appellants between July 2022 and February 2023 entered into agreements for sale with third parties for the specified flats. Although, the flats were eventually not sold.
- On 26.08.2022, the Hon'ble NCLT ordered liquidation proceedings against the Respondent and appointed the Liquidator.
- On 25.08.2023, the Hon'ble High Court was pleased to clarify that the disputes between the Parties were non-arbitrable. Further, by order dated 11.01.2023, the Ld. Arbitrator terminated the arbitration.
- Thereafter, the appellants approached the Hon'ble High Court seeking appointment of a substitute arbitrator. The Hon'ble High Court vide its order dated 12.04.2024 ("Impugned Order") appointed a substitute arbitrator. However, vide the Impugned Order, the Hon'ble Court also observed that all arbitral proceedings conducted between 26.09.2019 and 26.08.2022 were void due to the moratorium and the substitute arbitrator could commence the arbitration afresh.
- Aggrieved by the Impugned order, the Appellant filed the subject Civil Appeal.

Issue(s) at hand?

- Whether the High Court was justified in saying that the proceedings held by the Arbitral Tribunal on the seven relevant dates, i.e., from 17.03.2022 to 25.08.2022 were liable to be declared as nullity on the premise that those proceedings were undertaken during the period of moratorium under Section 14 of the IBC?

Findings of the Court

- The Hon'ble Court was pleased to set aside the Impugned Order to the extent of its observation regarding nullity of proceedings undertaken during the period of moratorium.
- The Hon'ble Court held that under Section 15(2) of the Act, the High Court's role is confined to appointing a substitute arbitrator according to the original appointment mechanism, and it cannot, in that jurisdiction, declare prior proceedings a nullity or set aside tribunal orders.
- Section 15(3) permits the substitute arbitrator, to repeat prior hearings at his discretion, if the same is not already agreed upon by the parties. Further, Section 15(4) provides that prior orders or rulings are not rendered invalid solely due to a change in the tribunal's composition. It was observed that section 15(2) have to be read and harmoniously interpreted with sections 15(3) and 15(4).
- The Hon'ble Court referred to *Yashwith Constructions Pvt. Ltd. v. Simplex Concrete Piles India Ltd. & Anr.*¹ to reaffirm that the substitute arbitrator must be appointed in accordance with the original agreement or applicable provisions for appointment at the initial stage. In the present case since there was no original appointment mechanism, section 11 of the Act would be applicable. The

¹(2006) 6 SCC 204

scope of section 11 was subject to various debates but has been finally settled on a restricted ambit being that the court only needs to make a *prima facie* finding that an arbitration agreement exists. Therefore, neither of the above provisions granted the Hon'ble High Court the jurisdiction to assert that previous proceedings were a nullity.

- The observations in the case of In *Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996 & Stamp Act, 1899*² were also cited to say that where there tribunal orders cannot be challenged or set aside, no other remedy or alternate procedure can be adopted by a court, which derives its jurisdiction from the act, to assail such order. The scope of section 37 of the Act is only for challenging orders under section 17 and orders allowing an application under section 16 of the Act. Rejection of applications under section 16 cannot be contested under section 37.
- In the present case therefore, the Hon'ble High Court could not have vide its Impugned Order and in application under Section 15(2), set aside (i) an order rejecting a Section 16 application; (ii) Section 17 orders in a proceeding which was not a Section 37 proceeding; or (iii) other procedural orders.
- It was further affirmed that as observed in *Hindustan Construction Co. Ltd. v. Bihar Rajya Pul Nirman Nigam Ltd*³, when an arbitrator is unable to act, the proper course is substitution under Section 15(2) such that it preserves continuity, with prior proceedings remaining valid unless a party objects.
- The Supreme Court after considering the passage of time and the involvement of homebuyers, also considered that if the Impugned Order is to be allowed, it would result in an inequitable and inefficient outcome for the homebuyers. Therefore, in exercise of its powers under Article 142 of the Constitution, declared the transactions pursuant to the erstwhile tribunal's Section 17 orders to be lawfully valid.

HSA Viewpoint

The views of the Hon'ble Apex Court were based on the fundamental principles of the Act i.e. the Act is a self-contained code and there should be least judicial interference. The scope of section 15 is limited.

It supports the idea of arbitral continuity by stating that previous steps in the process, temporary actions, and earlier decisions remain valid even if the tribunal's members change, unless they are properly challenged through legal options like an appeal under Section 37. The decision reinforces the independent structure of the arbitration system by stopping courts from interfering through substitution processes.

judgment is thus a welcome clarification on the scope of the section 15 of the Act and to curb the excessive judicial interference.

² (2024) 6 SCC 1

³ 2025 SCC OnLine SC 2578

The General Secretary, Vivekananda Kendra Vs. Pradeep Kumar Agarwalla and Others

Special Leave Petition (Civil) No. 9558 of 2023

Background facts

- A registered Lease Deed dated March 23rd 1998 (“Lease Deed”) was executed between Late Anima Bose (“Lessor”) and Vivekananda Kendra (“Appellant”) in respect of land situated at Mouza – Baripada Town, Ward No. 4 (Golapbag), under Khata No. 6, Plot No. 203, (“said Plot”), for a period of 99 years at an annual rent of Rs. 1,000/-.
- Pursuant to the execution of the Lease Deed, the Plaintiff established its branch centre on the said plot.
- On December 3rd, 2003, Late Anima Bose executed a registered Deed of Cancellation (“Cancellation Deed”) purporting to unilaterally cancel the 99-year Lease Deed.
- Thereafter, a notice dated December 14th, 2003, was issued by Late Anima Bose calling upon the Appellant to vacate the said Plot. The Plaintiff, by reply dated January 2nd, 2004, asserted its subsisting leasehold rights under the Lease Deed.
- On May 3rd, 2005, Late Anima Bose executed a Power of Attorney in favour of Sujit Kumar Mohanty (“Defendant No. 2”).
- The Plaintiff alleges that its possession of the said Plot was forcibly disturbed and taken on May 9th, 2005.
- Acting under this Power of Attorney, Defendant No. 2 executed a registered Sale Deed dated January 17th, 2006, in favour of Pradeep Kumar Agarwalla and Ratandeep Agarwalla (“Defendant Nos. 3 and 4” respectively) for Rs. 17,80,100/- in respect of the said Plot.
- The Plaintiff filed a Civil Suit No. 100/524 of 2011 –2005 (“Civil Suit”) before the Court of Civil Judge, Baripada, seeking declarations regarding the 99-year lease, illegality of the cancellation deed, invalidity of the Sale Deed, recovery of possession, and permanent injunction.
- On February 27th 2018 the Civil Suit was decreed in favour of the Plaintiff, which was confirmed by the First Appellate Court on October 5th, 2021.
- Aggrieved by the above judgement the Defendants filed second appeal before the High Court of Orissa.
- The High Court of Orissa vide order dated 23rd December 2022 allowed the Second Appeal and set aside the findings of the Trial Court and First Appellate Court.
- Aggrieved by the judgment of the High Court, the Plaintiff preferred the present proceeding before the Supreme Court.

Issue(s) at hand?

- Whether the Lease Deed constitutes a lease or merely a license?

Findings of the Court

- At the outset the Hon’ble Court relied upon the judgement in the case of *Associated Hotels of India Ltd. v. R.N. Kapoor*¹ and reiterated that the substance of the document prevails over its nomenclature, and the real test is the intention of the parties gathered from the document read as a whole.
- The Hon’ble Court further relied upon the judgement in the case of *Mrs M.N. Clubwala v. Fida Hussain Saheb*² and held that the intention of the parties must be derived from the express terms of the agreement.
- The Hon’ble Court relied on the judgement in the case of *Annaya Kocha Shetty (Dead) Through LRs v. Laxmi Narayan Satose*³, which outlined the guiding principles for interpreting deeds and instruments. As per the judgment a contract is first to be understood according to its plain, ordinary, and literal meaning (the literal rule). If a literal reading produces an absurd or unreasonable result, the Court may adopt a modified construction (the golden rule). Finally, the Court may, with caution, interpret a contract purposively in light of its object and context to determine the intended purpose of the contract/agreement.
- The Hon’ble Court held that while determining the nature of the Lease Deed, the intention of the parties must primarily be gathered from the plain and ordinary meaning of the words used in the deed. The Hon’ble Court stated that if the terms of a contract or deed are clear and unambiguous,

¹ AIR 1959 SC 1262

² 1965 AIR SC 610

³ 2025 INSC 466

the document must be read as a whole and its clauses interpreted harmoniously to ascertain the true intention of the parties, without diluting or extending the covenants beyond their express scope.

- The Hon'ble Court further stated that reliance on surrounding circumstances or the subsequent conduct of the parties is permissible only where the intention of the parties cannot be clearly discerned from the language of the document itself. The Hon'ble Court observed that excessive reliance on ex-post facto conduct, such as statements made in cross-examination regarding possession or occupation, is not a safe guide when the document already clearly expresses the rights and obligations of the parties.
- The Hon'ble Court, upon examining the clauses of the Lease Deed, held that the use of expressions such as "the lessor hereby demises to the lessee," the grant of the property for a fixed term of 99 years, the stipulation of yearly rent, and the recognition of the lessee's rights, including those of its successors and permitted assigns, clearly indicated that the document unequivocally created a lease and effected a transfer of interest in the immovable property.
- The Hon'ble Court further ejected the reasoning of the High Court that retention of the first floor by the lessor negated exclusive possession. It held that exclusive possession must be assessed with respect to the demised premises, and partial retention by the lessor does not convert a lease into a license.
- Accordingly, the Hon'ble Court set aside the judgment of the High Court and restored the concurrent findings of the Trial Court and the First Appellate Court and held that the Sale Deed dated January 17th, 2006, could not defeat the subsisting leasehold rights of the Plaintiff.
- Accordingly, the Hon'ble Court allowed the present proceeding without costs.

HSA Viewpoint

The judgment reaffirms the classical distinction between a lease and a licence in Indian property law by emphasizing that the true nature of a transaction must be determined from the plain language of the instrument. The guiding principles for interpreting deeds and instruments for a contract is first to be understood according to its plain, ordinary, and literal meaning (the literal rule). If a literal reading produces an absurd or unreasonable result, the Court may adopt a modified construction (the golden rule).

The Hon'ble Court held that the document in question clearly created a lease, as it used expressions such as "the lessor hereby demises to the lessee," granted the property for a fixed term of 99 years, stipulated yearly rent, and recognized the rights of the lessee along with its successors and permitted assigns, thereby transferring an interest in immovable property.

The Hon'ble Court further held that the unilateral cancellation of a registered lease deed, in the absence of contractual or statutory authority, is legally impermissible and cannot extinguish vested leasehold rights.

By setting aside the High Court's reliance on subsequent conduct to reinterpret the document, the Hon'ble Court reaffirmed that where contractual terms are clear, literal interpretation must prevail, thereby safeguarding the sanctity of registered property transactions.

Sriganesh Chandrasekaran & Others Vs. M/s. Unishire Homes LLP & Others

Civil Appeal No. 10527-10528 / 2024

Background facts

- The present Appeals arise out of the judgment and final orders dated 30.07.2024 and 19.10.2023 passed by the National Consumer Disputes Redressal Commission (“Commission”) in a Consumer Complaint and Review Petition.
- R Mohanraj, H. S. Shankumar, M. Thimmaraju (“Landowners”) had entered into a Joint Development Agreement dated 24.02.2012 (“JDA”) with Unishire Homes LLP (“Developer”) and executed a General Power of Attorney (“GPA”).
- On 21.02.2013, the Developer obtained the requisite sanctioned plans and approvals for the project. Thereafter, commencing from 29.07.2013, the Developer entered into Sale Agreements with prospective flat purchasers, wherein it undertook to hand over possession of the respective flats within a period of 36 months, subject to an additional grace period of six months as stipulated under the agreements.
- The stipulated period for delivery of possession, including the contractual grace period of six months, expired on 24.08.2017; however, the project remained incomplete. Consequently, the flat purchasers instituted a complaint before the Commission alleging deficiency in service and unfair trade practices on account of the delay in handing over possession.
- By order dated 19.10.2023, the Commission held the Developer liable for deficiency in service and directed completion of construction and handover of possession. The Developer was directed to pay interest at 6% per annum on the amounts deposited until the offer of possession, failing which the amount would attract interest at 9% per annum; the Landowners were not held liable as the construction obligation rested solely with the Developer.
- In Review proceedings, the Commission, by order dated 15.12.2023, partly allowed the appellants’ plea by holding the landowners jointly and severally liable, but declined the claim for enhanced delay compensation of ₹5 per square foot per month along with interest at 6% per annum.
- The Landowners challenged the order by filing SLP (C) No. 9470/2024, pursuant to which the Supreme Court set aside the order dated 15.12.2023 and remanded the Review Petition to the Commission for fresh consideration after hearing all parties.
- Upon reconsideration, by order dated 30.07.2024, the Commission held that the Landowners were not liable for delay compensation but directed both the Landowners and the Developer to transfer title and execute the sale deeds in favour of the purchasers.
- Aggrieved by the finding that Landowners were not jointly and severally liable for delay compensation, the appellants approached the Supreme Court.

Issue(s) at hand?

- Whether Landowners under a Joint Development Agreement can be held jointly and severally liable along with the developer for delay in handing over possession of flats.
- Whether, in the absence of any role in construction, Landowners can be fastened with liability for deficiency in service under the Consumer Protection Act, 2019.

Arguments of the Parties

- Arguments by Appellants
 - The execution of the GPA created a principal–agent relationship between the Landowners and the developer, making the Landowners liable for the acts of the Developer.
 - Various clauses of the Sale Agreement indicated joint responsibility of Landowners and Developers for deficiency in service.
- Arguments by Landowners:
 - Under the JDA, the obligation to undertake construction, deliver possession, and comply with timelines rested entirely with the Developer.
 - Clause 7 of the JDA provided and clauses 2 and 3 of GPA no relationship of principal and agent exists between the Landowners and the Developer.
 - The Landowners were not signatories to the Sale Agreements and had no role in construction or delay.
 - The delay was not attributable to any act or omission on their part.

Findings of the Court

- The Supreme Court undertook detail examination of the JDA and GPA and made the following findings:
 - Nature of Rights and Obligations under the JDA
 - The Developer had exclusive authority in respect of its allocated share to undertake construction, enter into sale agreements with purchasers, receive consideration, and deliver possession.
 - The delay in delivery related solely to the flats falling within the Developer’s share and arose from construction obligations undertaken exclusively by the Developer.
 - Principal- Agent Relationship
 - Execution of a GPA does not automatically render the principal liable for all acts of the agent.
 - The scope of liability must be determined by the contractual allocation of responsibilities.
 - In the present case, the GPA merely authorised the developer to execute transactions concerning its share and did not create joint construction liability.
 - Deficiency in Service
 - Section 74 provides only one period of limitation, namely 60 days, and the proviso does not create a separate or extended limitation period.
 - The proviso merely enables delayed filing within the framework of the main provision and cannot be interpreted to override or enlarge the substantive provision.
 - Transfer of Title
 - The obligation to undertake construction and hand over possession rested exclusively with the Developer.
 - There was no act or omission attributable to the Landowners contributing to the delay.
 - The indemnity clauses under the JDA protected the Landowners from liabilities arising out of construction-related defaults of the Developer.
 - Accordingly, the Landowners could not be held jointly and severally liable for delay compensation.
- The Supreme Court held that:
 - Liability for delay compensation and deficiency in service rests solely with the Developer.
 - The Landowners cannot be saddled with joint and several liability in the absence of any role in the construction or the delay.
 - The directions requiring joint execution of sale deeds and transfer of title were proper and legally sustainable.
 - Accordingly, the appeals were dismissed.

HSA Viewpoint

The recent judgment has reinforced a critical aspect of joint development arrangements, underscoring that liability should align with contractual responsibilities rather than mere land ownership. This ruling brings much-needed certainty to real estate transactions by shielding landowners from unintended consumer claims when developers handle development obligations. It also protects buyers, holding both parties jointly responsible for transferring titles and completing conveyance.

In light of this judgment, it is essential to meticulously draft and clearly delineate the roles and responsibilities of landowners and developers in the JDA. Explicit definition of these aspects is crucial to avoid ambiguity and ensure that liabilities are allocated in accordance with the agreed-upon terms, thereby fostering a balanced and equitable partnership. By doing so, parties can ensure that their interests are protected and that the JDA serves as a robust foundation for a successful collaboration.

Thomas Varghese Vs. Sundaram Finance Ltd.

2026: DHC:636-DB

Background facts

- The dispute arose from a loan transaction between the parties. The Petitioner approached the Respondent for financial assistance to purchase a vehicle. Accordingly, the parties entered into a loan agreement dated 31.07.2019. The father of the Petitioner also signed the agreement as a Guarantor. The Respondent disbursed a loan of Rs. 20,15,000/- for purchase of the vehicle. The loan amount was to be repaid in 42 monthly instalments commencing from 17.08.2019 till 17.01.2023.
- The Petitioner subsequently defaulted in repayment of the instalments of the loan amount. Consequently, the Respondent issued a Legal Notice dated 05.06.2021 demanding payment of the outstanding amount of Rs. 21,91,738.81/-.
- On receipt of the said Legal Notice, the Petitioner surrendered the hypothecated vehicle to the Respondent on 11.11.2021. The Respondent sold the vehicle on 14.02.2022 for a sum of Rs. 8,00,000/-. After adjusting the sale proceeds, a shortfall of Rs. 16,62,289.80/- remained outstanding. The Respondent issued another notice dated 09.03.2022 demanding payment of the balance amount from the Petitioner and the Guarantor.
- Since the due amount remained unpaid, the Respondent invoked the arbitration by issuing notice dated 05.06.2021 under Section 21 of the Arbitration and Conciliation Act, 1996 ("the Act") for appointment of an Arbitrator through Madras Chamber of Commerce and Industries ("MCCI").
- Pursuant thereto, MCCI appointed a Sole Arbitrator on 31.05.2022. The Respondent filed a Statement of Claim on 26.08.2022 seeking recovery of Rs. 15,76,575.52/- along with interest. The Arbitrator issued notices to the Petitioner and the Guarantor, but neither appeared before the Arbitral Tribunal. However, in spite of service of the notice, the Petitioner and his father did not contest the claim and hence, were set *ex-parte*.
- Accordingly, in absence of the Petitioner and his father, the evidence was recorded from the side of the Respondent and the Arbitrator passed an award on 13.04.2023 directing the Petitioner and the Guarantor to pay an amount of Rs. 15,76,575.52/- along with interest at 18% per annum to the Respondent from 14.02.2022 till the date of realization, along with costs. Before passing of the award, the father of the Petitioner who stood as the Guarantor passed away on 26.01.2023.
- Aggrieved by the award dated 13.04.2023, the Petitioner challenged the same by filing a petition under Section 34 of the Act before the Hon'ble Madras High Court seeking to set aside the award..

Issue(s) at hand?

- Whether the appointment of the Sole Arbitrator by the MCCI amounted to a unilateral appointment of Arbitrator?
- Whether the arbitral award was a nullity on the ground that it had been passed against a deceased person?
- Whether the Petitioner was denied an opportunity to contest the arbitral proceedings, thereby violating the principles of natural justice?

Findings of the Court

- The Hon'ble Court first addressed the contention that the arbitral award was void because it had been passed against the father of the Petitioner, who had died prior to the pronouncement of the award. The Hon'ble Court observed that notices had been issued to both the Petitioner and his father during the arbitration proceedings. However, neither of them appeared before the Arbitrator. As a result, the Arbitrator had no knowledge of the death of the Guarantor.
- Nevertheless, the Hon'ble Court held that an award passed against a deceased person is a nullity in law. Accordingly, the arbitral award was declared void insofar as it related to the father of the Petitioner. However, the Hon'ble Court clarified that the invalidity of the award against the deceased Guarantor would not invalidate the entire award and the award would remain valid and enforceable against the Petitioner, who was the principal borrower.
- The Petitioner had also contended that he had not been given an opportunity to contest the arbitral proceedings. The Hon'ble Court rejected this argument. It was noted that multiple notices had been issued by the arbitrator to the Petitioner and the Guarantor. Despite receiving these notices, they chose not to participate in the proceedings. Therefore, the Hon'ble Court held that the Petitioner could not later complain of lack of opportunity or violation of natural justice.
- The central issue in the case concerned whether the appointment of the Arbitrator by MCCI constituted a unilateral appointment prohibited by law. The Petitioner argued that the appointment was invalid in light of the ruling of the Hon'ble Supreme Court in *Perkins Eastman*

Architects DPC v. HSCC (India) Ltd., which held that a party interested in the dispute cannot unilaterally appoint a sole arbitrator.

- The arbitration clause in the loan agreement provided that disputes would be referred to a sole arbitrator nominated by either the MCCI or the Managing Director of the Respondent.
- The Hon'ble Court observed that if the Arbitrator had been appointed by the Managing Director of the Respondent, such appointment would clearly be hit by Section 12(5) of the Act and the judgement of *Perkins Eastman* would come into play. However, in the present case, the arbitrator had not been appointed by the Respondent but by MCCI.
- The Hon'ble Court then examined the nature and credibility of MCCI as an arbitral institution. It noted that MCCI is a longstanding institution established in 1836 and is affiliated with the Indian Council of Arbitration. It is also recognised by international arbitration bodies such as International Council for Commercial Arbitration.
- The Hon'ble Court further relied on decisions of the Hon'ble Kerala High Court in the matter of *Sundaram Finance Ltd. v. Ajith Lukose & Anr.*, 2025 KHC OnLine 1733, the Hon'ble Bombay High Court in the matter of *Jularam Fabrics v. Nisarg Textiles Pvt. Ltd.*, *Arbitration Petition No. 267 of 2024*, and the Hon'ble Delhi High Court in the matter of *Balaji Enterprises & Ors. v. Sundaram Finance Ltd.*, *EFA (COMM) 8/2025*. These judgments recognized that where the parties agree to institutional arbitration, the appointment of an arbitrator by the designated institution cannot be equated with unilateral appointment by one party.
- The Hon'ble Court therefore held that appointment of an arbitrator by an Institute pursuant to an agreed arbitration clause does not amount to unilateral appointment. Such appointments are valid provided the institution is credible and independent. Consequently, the Hon'ble Court concluded that the arbitral award did not suffer from any infirmity on the ground of unilateral appointment.
- The Hon'ble Court also reiterated the limited scope of interference under Section 34 of the Act and observed that the Arbitrator had considered the evidence and reached factual conclusions that did not suffer from perversity or patent illegality.
- As a result, the Hon'ble Madras High Court dismissed the petition under Section 34 and upheld the arbitral award against the Petitioner and also imposed a cost of Rs. 25,000/- on the Petitioner.

HSA Viewpoint

The judgment provides clarity on the issue of appointment of arbitrators. The main concern after the decision of the Hon'ble Supreme Court in *Perkins Eastman Architects DPC v. HSCC (India) Ltd.* has been to prevent unilateral appointment of arbitrators by an interested party, which could undermine the neutrality of the arbitral process.

The Hon'ble Madras High Court, in the present case, has rightly distinguished between unilateral appointment by a party and appointment by an arbitral institution agreed upon by the parties. Where the arbitration clause authorises an independent institution to nominate the arbitrator, the institution merely acts as an appointing authority pursuant to the agreement entered between the parties. Such a process cannot automatically be equated with unilateral appointment. This approach preserves the principle of party autonomy, which is fundamental to arbitration.

At the same time, the Hon'ble Court prudently observed that not every organisation claiming to be an arbitral institution should be accepted without scrutiny. In some situations, entities may be structured in a way that indirectly allows one party to influence the appointment process. Therefore, courts must examine the credibility and independence of the institution whenever such objections are raised. This safeguard ensures that institutional arbitration is not used as a mechanism to circumvent the prohibition on unilateral appointments.

The judgment also highlights a broader structural issue. The Arbitration and Conciliation (Amendment) Act, 2019 envisaged a system where the Supreme Court and High Courts could designate recognised arbitral institutions. However, these provisions have not yet been notified, leaving courts to evaluate institutions on a case-by-case basis.

Overall, the decision strikes a balanced approach by upholding institutional arbitration while ensuring neutrality in the appointment process and provides useful guidance for future challenges to arbitral appointments.

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