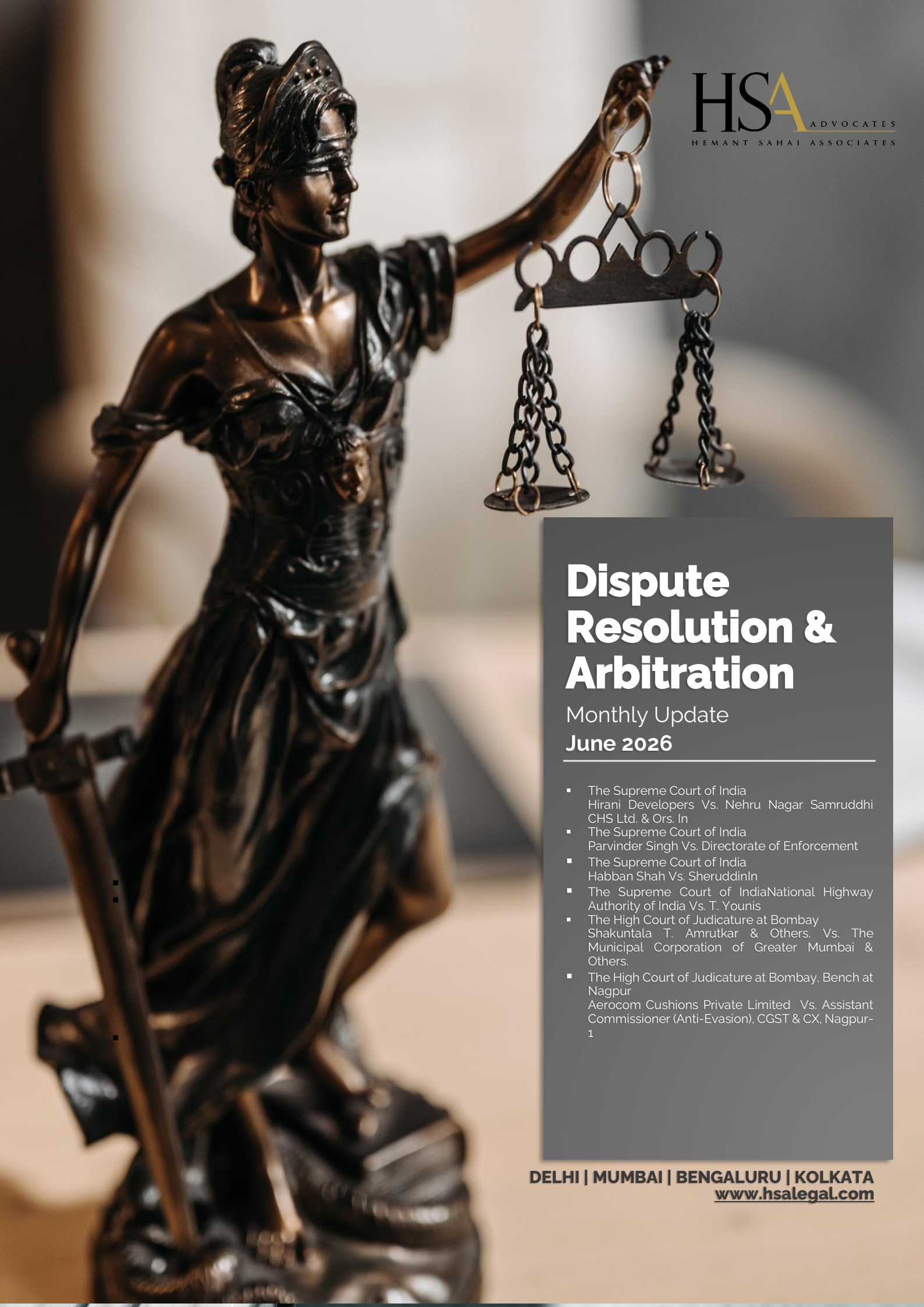

HSA ADVOCATES
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Dispute Resolution & Arbitration

Monthly Update

June 2026

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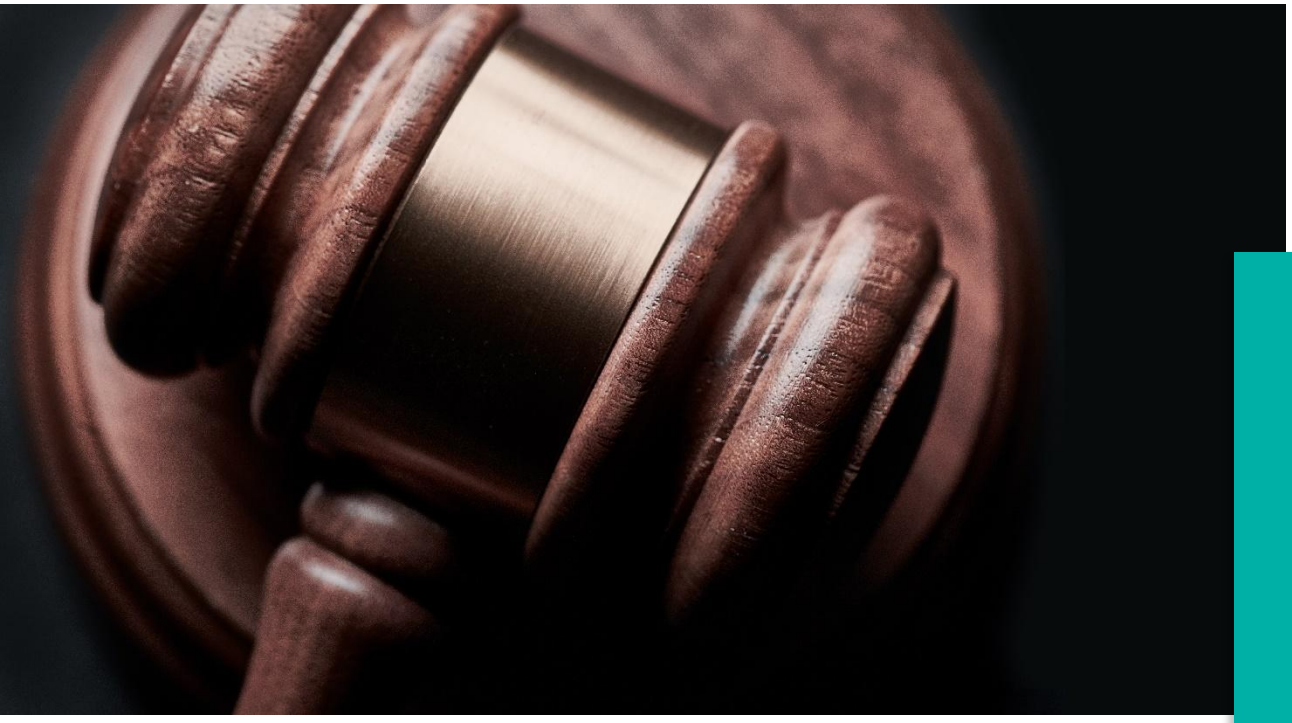
DISPUTE RESOLUTION AND ARBITRATION UPDATE



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The Supreme Court of India

Hirani Developers Vs. Nehru Nagar Samruddhi CHS Ltd. & Ors.

2026 INSC 484

Background facts

- Appellant entered into a Development Agreement dated 20.12.2011 with Respondent No. 1 for the redevelopment of a housing project. Clause 36 of the Development Agreement contained an arbitration clause providing that disputes between the parties would be resolved through arbitration under the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**").
- Subsequently, Respondent No. 1 executed separate Permanent Alternate Accommodation Agreements ("**PAAA**") with the other Respondents being the individual members of the Society.
- Clause 14 of each PAAA expressly provided: "It is clarified that all the terms and conditions of the Development Agreement dated 04/07/2012 shall be construed to form a part of these presents and all the clauses of the same shall be binding on the parties hereto."
- Disputes subsequently arose between the parties and certain Respondents/Society members initiated proceedings under the Consumer Protection Act, 2019.
- Appellant invoked arbitration under Section 21 of the Arbitration Act by relying upon Clause 36 of the Development Agreement and sought the nomination of an arbitrator. However, the Respondents refused to participate in arbitration and contended that the PAAAs did not contain an independent arbitration clause.
- Applications were filed under Section 11 of the Arbitration Act before the Bombay High Court seeking appointment of an arbitrator.
- The High Court dismissed the applications holding that the arbitration clause contained in the Development Agreement had not been incorporated into the subsequent PAAAs and that no arbitration agreement existed between the parties.
- Aggrieved by the said order, Appellant approached the Supreme Court.

Issue(s) at hand?

- Whether the arbitration clause contained in the Development Agreement stood incorporated into the subsequent PAAAs by virtue of Clause 14 thereof?
- Whether the requirements of Section 7(5) of the Arbitration and Conciliation Act, 1996 were satisfied?
- Whether the case involved a mere reference to an earlier agreement or incorporation of the earlier agreement by reference?
- Whether a valid arbitration agreement existed between the parties warranting the exercise of powers under Section 11 of the Arbitration Act?

Findings of the Court

- The Court examined how Section 7(5) of the Arbitration Act should be interpreted and when a reference in a contract to another document containing an arbitration clause constitutes an arbitration agreement.
- Reliance was placed on M.R. Engineers and Contractors Private Limited v. Som Datt Builders Limited[1], wherein the Supreme Court distinguished between a mere reference to another document and incorporation of that document by reference. The Court held that where parties intend to incorporate a document in its entirety into a contract, all terms of the referred document, including the arbitration clause, become part of the later contract. It is important to understand whether there is conscious acceptance of such arbitration clause from another document, by the parties as part of their contract. As the Act itself does not contain any directions or conditions for interpretation of such intention, normal rules of construction of contract have to be followed.
- The Court also particularly relied on the following observations of M. K. Engineers case:
  - When there is a reference to another document, it is necessary to ascertain whether particular terms and conditions of the contract will be governed by the document referred or if all clauses of referred document will wholly get incorporated into the contract.
  - For example, if a contract states that document 'x' shall form part and parcel of the contract, it is deemed that the contract will be governed entirely by document 'x'. Whereas, if a contract provides particular clauses to be governed by document 'x', for example - specification of supplies will be as provided in document 'x', then the Court can turn to document 'x' only to determine the specification of goods to be supplied and no other terms.
- The Court also quoted with approval the portion from M. K. Engineers judgment which relied upon NBCC (India) Limited v. Zillion Infraprojects Private Limited[2], wherein it was held that an arbitration clause would stand incorporated if:
  (i) the contract contains a clear reference to the document containing the arbitration clause;
  (ii) the intention to incorporate such clause is evident;
  (iii) the clause is capable of application to disputes arising under the subsequent contract;
  (iv) the clause is not inconsistent with the terms of the subsequent contract.
- Applying the aforesaid principles, the Court noted that Clause 14 of the PAAAs expressly stipulated that all terms and conditions of the Development Agreement would form part of the subsequent agreements and that all clauses thereof would be binding upon the parties.
- The Court held that the language employed in Clause 14 left no room for doubt regarding the intention of the parties to incorporate the Development Agreement in its entirety into the PAAAs.
- Rejecting the High Court's interpretation, the Supreme Court held that the case did not involve a mere reference to the Development Agreement. Rather, it constituted incorporation by reference within the meaning of Section 7(5) of the Arbitration Act.
- The Court accordingly held that a valid arbitration agreement existed between the parties by incorporation and exercising its jurisdiction under Section 11 of the Arbitration Act, the Court set aside the Bombay High Court's order and appointed a Sole Arbitrator to adjudicate the disputes between the parties.

HSA
Viewpoint

This Judgement clarified the legal scope of Section 7(5) of the Arbitration and Conciliation Act, 1996.

It is a significant reaffirmation of the doctrine of incorporation by reference under Section 7(5) of the Arbitration Act. The Supreme Court has clarified that the existence of an arbitration agreement is not dependent upon repetition of an arbitration clause in every subsequent agreement. Where parties clearly express an intention to incorporate an earlier agreement in its entirety, the arbitration clause contained therein may also become binding upon the parties.

The ruling is particularly significant for redevelopment projects, infrastructure contracts and complex commercial transactions involving multiple interconnected agreements. Such transactions frequently involve a principal agreement followed by several ancillary agreements executed with different stakeholders at different stages. The judgment reduces the risk of fragmented dispute resolution mechanisms arising merely because an arbitration clause is not repeated verbatim in each subsequent agreement.

From a procedural standpoint, the decision is equally important because it also clarifies the approach to be adopted at the Section 11 stage. Once the Court is satisfied that a valid arbitration agreement exists by incorporation, appointment of an arbitrator is a must.

[1] (2009) 7 SCC 696
[2] (2024) 7 SCC 174

The Supreme Court of India
Parvinder Singh Vs. Directorate of Enforcement

2026 INSC 519
Criminal Appeal No. 2678 of 2026 (Arising out of SLP (Crl.) No. 12055 of 2025)

Background facts

- The present appeal arose from proceedings initiated by the Directorate of Enforcement ("ED") against the Appellant under the Prevention of Money Laundering Act, 2002 ("PMLA").
- An Enforcement Case Information Report ("ECIR") was registered against the Appellant in July 2023. Subsequently, the Appellant was arrested on 27.04.2024 in connection with the alleged commission of offences under Sections 3 and 4 of the PMLA.
- Thereafter, the ED filed a prosecution complaint before the Special Court on 24.06.2024 seeking prosecution of the Appellant under the provisions of the PMLA.
- On the same day i.e. on 24.06.2024, the Special Court directed that the complaint be registered as a miscellaneous case and fixed the matter for further consideration of cognizance on 28.06.2024. When the matter was taken up on 28.06.2024, the Presiding Officer was on recess. Consequently, the matter was adjourned and posted for consideration of cognizance on 02.07.2024.
- In the meantime, the Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS") came into force with effect from 01.07.2024, replacing the Code of Criminal Procedure, 1973 ("CrPC").
- One of the significant changes introduced under the BNSS was the insertion of the first proviso to Section 223(1), which requires a Court to provide an opportunity of hearing to the accused before taking cognizance of an offence on a complaint.
- On 02.07.2024, after the BNSS had come into force, the Special Court took cognizance of the prosecution complaint filed by the ED without granting any hearing to the Appellant.
- Aggrieved thereby, the Appellant challenged the cognizance order before the Uttarakhand High Court, contending that the requirement of a pre-cognizance hearing under Section 223(1) of the BNSS was mandatory and ought to have been complied with before cognizance was taken.
- The Uttarakhand High Court dismissed the challenge and upheld the cognizance order, following which the Appellant approached the Hon'ble Supreme Court.

Issue(s) at hand?

- Whether the Section 223 (1) of the BNSS applies to complaints filed under the Prevention of Money Laundering Act, 2002?
- Whether the requirement of a pre-cognizance hearing under Section 223(1) of the BNSS would apply to a complaint filed prior to 01.07.2024, or whether such application would amount to giving retrospective effect to the provision?
- Whether non-compliance with the requirement of granting a hearing before taking cognizance renders the cognizance order invalid?

Findings of the Court

- The Hon'ble Supreme Court held that the first proviso to Section 223(1) of the BNSS confers a statutory right upon an accused person to be heard before cognizance is taken on a complaint. The Court also took note of its earlier decision in Kushal Kumar Agarwal v. Directorate of Enforcement[1].
- The Court observed that the legislature has consciously employed the expression "shall" in the proviso, making the requirement mandatory and not directory in nature.
- It was further held that the safeguard introduced under Section 223(1) is not merely procedural but is closely linked to the principles of natural justice and the constitutional guarantee of fair procedure under Article 21 of the Constitution.
- Rejecting the contention that the PMLA is a complete code excluding the operation of the BNSS, the Court held that procedural provisions contained in the general criminal law continue to apply to PMLA proceedings unless there is a clear inconsistency between the two enactments. In this regard, the Court relied upon Tarsem Lal v. Enforcement Directorate[2], Yash Tuteja v. Union of India[3] and Kushal Kumar Agarwal v. Directorate of Enforcement.

[1] 2025 SCC Online SC 1221
[2] (2024) 7 SCC 61
[3] (2024) 8 SCC 465

- The Court examined the scheme of the PMLA, particularly Sections 44, 46, 65 and 71, and concluded that the procedure governing complaint cases under the BNSS would apply to prosecutions under the PMLA.
- On the issue of transition from the CrPC to the BNSS, the Court held that mere filing of a complaint prior to 01.07.2024 does not amount to commencement of an inquiry.
- The Court observed that an inquiry commences only when the Court applies its judicial mind to the allegations for the purpose of proceeding further in the matter. While arriving at this conclusion, the Court considered and relied upon the principles laid down in Hardeep Singh v. State of Punjab[4].
- Since cognizance in the present case was taken on 02.07.2024, after the BNSS had come into force, the Special Court was required to comply with the mandate of Section 223(1) of the BNSS.
- The Supreme Court further held that denial of a mandatory hearing at the pre-cognizance stage cannot be treated as a curable procedural irregularity. Such non-compliance strikes the root of the proceedings and cannot be justified on the ground that no prejudice has been caused to the accused.

  Accordingly, the Supreme Court set aside the judgment of the Uttarakhand High Court as well as the cognizance order passed by the Special Court. The matter was remanded to the Special Court with a direction to proceed from the stage of taking cognizance and afford an opportunity of hearing to the Appellant in terms of the first proviso to Section 223(1) of the BNSS.

HSA
Viewpoint

This judgment is one of the first significant decisions dealing with the procedural changes introduced under the BNSS. While the transition from the CRPC to the BNSS has given rise to several practical questions, the present case specifically addresses the stage at which the new procedural safeguards become applicable.

It clarifies that the applicability of the first proviso to Section 223(1) depends on the date of cognizance and not merely on the date of filing of the complaint. By holding that mere filing of a complaint does not amount to commencement of an inquiry, the Court has provided useful guidance for matters that were pending during the transition from the CRPC to the BNSS.

The judgment is significant for its recognition of the accused's right to be heard before cognizance is taken on a complaint. The Court has treated this requirement as a mandatory safeguard and not just a procedural formality that can be dispensed with under the guise of convenience.

Although the present case arose under the PML Act, the principles laid down by the Supreme Court are likely to be relevant in proceedings under other special statutes that contemplate prosecution through complaint cases. The ruling may therefore have a wider impact on criminal and regulatory prosecutions where cognizance is taken after the commencement of the BNSS.

From a practical standpoint, the decision serves as a reminder that procedural safeguards introduced by the legislature must be adhered to strictly. The judgment reinforces that fairness at the threshold stage of criminal proceedings is an important component of the criminal justice system and cannot be overlooked even in cases involving serious economic offences.

[4] (2014) 3 SCC 92

The Supreme Court of India
Habban Shah Vs. Sheruddin

2026 SCC OnLine SC 814

Background facts

- The subject matter of the dispute is an agreement to sell dated 19.10.2005, pertaining to agricultural land measuring 12 kanals and 19 marlas situated in Village Shikarpur, Tehsil Tauru, District Mewat, Haryana. The Appellant (Habban Shah) agreed to sell the said land to the Respondent (Sheruddin) at Rs. 5,00,000 per acre, receiving Rs. 80,000 as earnest money, with the sale deed to be executed on or before 15.03.2006 and the balance sale consideration payable at the time of execution and registration.
- Upon non-execution of the sale deed, Respondent filed a suit for specific performance, which was decreed on 31.10.2012. The Trial Court passed a decree on 31.10.2012 directing the Appellant to execute the sale deed in favour of the Respondent after receiving the balance sale consideration within a period of three months from the date of the judgment. In the event of failure to execute the sale deed, the Respondent would be entitled to have the same executed through the process of the Court.
- Aggrieved by the decree, the Appellant preferred a First Appeal. During the pendency of the appeal, an interim order dated 17.12.2012 restrained the parties from alienating the suit property until 25.01.2013. However, the said order was not extended, and it lapsed on its own. The First Appeal got dismissed on 11.11.2014, and subsequently the Appellant filed a Second Appeal, during which no interim order was granted and the appeal ultimately got dismissed on 12.01.2017.
- The Respondent had initiated execution proceedings on 04.03.2013 for enforcement of the decree for specific performance, however the execution petition was dismissed for want of prosecution on 01.08.2014.
- A fresh execution petition was instituted on 08.01.2015 on behalf of Respondent. In response, the Appellant raised objections contending that the decree had become inexecutable as the Respondent had failed to deposit the balance sale consideration within the period of three months and had not sought any extension of time for depositing the balance consideration.
- The Executing Court by order dated 07.09.2015 dismissed the objections of the Appellant, held that the Respondent had always been ready and willing to perform his obligations under the agreement and that the balance sale consideration could not have been deposited due to the interim order passed in the first appeal or due to its pendency. The Appellant challenged the said order before the Hon'ble High Court in Civil Revision No. 7232 of 2015.
- During the pendency of the proceedings, the Respondent/moved applications seeking permission to deposit the balance sale consideration, which was ultimately allowed by the Executing Court and the amount of Rs.6,92,410/- was duly deposited.
- The Hon'ble High Court, by order dated 24.03.2025, dismissed the revision petition and affirmed that the decree remained executable.
- Aggrieved by these orders of the Hon'ble High Court, the Appellant filed the present SLP before the Hon'ble Supreme Court.

Issue(s) at hand?

- Does a decree of specific performance become inexecutable when the balance sale consideration is not deposited within the time stipulated, without any application for extension having been moved?
- Whether a judgment-debtor is required to file an application under Section 28 of the Specific Relief Act, 1963 seeking rescission of the contract before contending that the decree has become inexecutable?

Findings of the Court

- The Hon'ble Supreme Court held that the decree was a conditional decree imposing "*reciprocal obligations*" upon both parties. Although the decree expressly directed the Appellant to execute the sale deed upon receipt of the balance sale consideration within three months, the corresponding obligation upon Respondent to deposit the balance amount within the same period arose by necessary implication. The Court relied on Order XX Rule 12-A of Code of Civil Procedure, 1908 which mandates specification of a time period for payment of balance sale consideration in every decree of specific performance a mandatory provision.
- On the question of limitation and maintainability, the Hon'ble Court held that the second execution petition was within limitation period under Article 136 of the Limitation Act, 1963,

which provides a twelve-year period for execution. Relying upon *Bhagyoday Cooperative Bank Limited v. Ravindra Balkrishna Patel, (2022) 14 SCC 417,* the Hon'ble Court held that dismissal of the earlier execution petition for default does not bar a fresh execution petition filed within limitation.

- On the substantive issue, the Hon'ble Court found that Respondent had neither deposited the balance sale consideration within the stipulated three months nor moved any application for extension of time within that period under Sections 148/151 CPC or Section 28 of the Specific Relief Act, 1963. The Hon'ble Court rejected the plea that the interim order passed in the first appeal prevented deposit of balance sale consideration, noting that the said order only restrained alienation and its interpretation would be limited to that and the order in any case, lapsed on 25.01.2013.
- The Hon'ble Court while relying upon *P.R. Yelumalai v. N.M. Ravi, (2015) 9 SCC 52*, held that a conditional decree is self-operative, and non-compliance of any condition in the absence of an extension of time application may result in automatic dismissal of the suit. Subsequent permission to deposit the amount and the actual deposit made thereafter were held not to constitute condonation of delay or deemed extension of time.
- The Hon'ble Court further held, relying upon *Prem Jeevan v. K.S. Venkata Raman, (2017) 11 SCC 57,* that a formal application under Section 28 of the Specific Relief Act seeking rescission is not mandatory, and that the court may, in appropriate circumstances, treat the contract as rescinded on account of non-compliance with any decree conditions. Subsequently, reliance was also placed on *Balbir Singh v. Baldev Singh, (2025) 3 SCC 543*, to affirm that the court does not become functus officio after passing a decree for specific performance, but that the absence of timely compliance and unexplained delay disentitles the decree-holder from execution.
- Invoking *N.P. Thirugnanam v. Dr. R. Jagan Mohan Rao, (1995) 5 SCC 115,* the Hon'ble Court reiterated that specific performance is an equitable and discretionary remedy, and that readiness and willingness must be demonstrated continuously, including the period after issuance of decree. Respondent's conduct was held to be inconsistent with such continuous readiness and willingness.
- The Hon'ble Supreme Court set aside the orders of the Hon'ble High Court and the Executing Court, upheld the objections of the Appellant, and directed refund of the earnest money of Rs. 80,000 with simple interest at 8% per annum from 19.10.2005 until the date of refund. Further in the event of default, the Appellant was permitted to sell one acre of the suit land to make the payment.

HSA
Viewpoint

The decision of the Hon'ble Supreme Court is significant as it settles the law regarding execution and equitable remedies of specific performance. The Hon'ble Court has correctly held that the obligation of readiness and willingness does not conclude upon the passing of the decree but subsists till execution, and that non-compliance with a decree condition, in the absence of extension of time application, renders the decree inexecutable. The ruling also helpfully clarifies that a formal application under Section 28 of the Specific Relief Act, 1963 for rescission due to non-compliance of conditions is not a mandatory prerequisite. While the judgment upholds the importance of timelines for conditional decrees, but it doesn't impose an inflexible rule, it applies only to cases where the default is unexplained, the period has passed without an extension request, and the decree-holder's conduct is inconsistent with obligations under the contract.

The Supreme Court of India
National Highway Authority of India Vs. T. Younis

2026 SCC OnLine SC 1060

Background facts

- The dispute arose from a land acquisition matter in Bellary District, Karnataka. On 15.12.2009, the Ministry of Shipping, Road Transport and Highways issued a preliminary notification under Section 3A(1) of the National Highways Act, 1956 ("**1956 Act**") for the acquisition of land owned by Respondent No. 1, T. Younis. Thereafter, by an Award dated 05.12.2011, the competent authority determined the compensation payable under Section 3G(1) of the 1956 Act.
- Being dissatisfied with the compensation awarded, the Appellant, National Highways Authority of India ("**NHAI**"), invoked arbitration under Section 3G(5) of the 1956 Act. The Deputy Commissioner-cum-Arbitrator, Bellary, passed an Award dated 16.02.2013 and fixed the market value of agricultural land at Rs. 362 per square metre and non-agricultural land at Rs. 741 per square metre. However, the Hon'ble High Court of Karnataka set aside this award vide order dated 16.03.2019 and remanded the matter to the Arbitrator for fresh consideration.
- Following the remand, the Arbitrator conducted fresh proceedings and passed a new Award on 03.02.2022. The Award granted the benefits available under Sections 23(1-A), 23(2), 28 and 34 of the Land Acquisition Act, 1894. After the Award was passed, on 08.03.2022, the Appellant filed an application under Section 33(1)(a) of the Arbitration and Conciliation Act, 1996 ("**the Act**"), seeking correction of the Award on the ground that the grant of additional market value under Section 23 and interest under Section 34 of the 1894 Act was legally unsustainable. On 10.03.2022, Respondent No. 1 filed an application under Section 33(4) seeking an additional award of 50% over and above the market value, claiming that such a request had been made during the arbitration proceedings but had not been considered in the final Award.
- By a common order dated 04.07.2022, the Arbitrator dismissed both applications filed under Section 33 of the Act. The Appellant received a certified copy of the said order on 15.09.2022. Thereafter, on 29.10.2022, the Appellant filed a petition under Section 34 of the Act along with an application seeking condonation of delay. Respondent No. 1 objected arguing that the petition was barred by limitation because it has been filed beyond the maximum condonable period of 120 days prescribed under the proviso to Section 34(3) of the Act.
- By an order dated 05.08.2023, the Principal District and Sessions Judge, Bellary, condoned the delay and allowed the petition under Section 34 to proceed. Aggrieved by this order, Respondent No. 1 filed Writ Petition No. 105176/2023 before the Hon'ble High Court of Karnataka. By its judgment dated 22.01.2024, the Hon'ble High Court allowed the writ petition and held that the Appellant's petition under Section 33(1)(a) was not maintainable because it sought modification of the Award rather than correction of any clerical or typographical error. On this basis, the Hon'ble High Court held that the Appellant could not claim the benefit of limitation under Section 34(3) of the Act and consequently dismissed the arbitration petition. Aggrieved by the decision of the Hon'ble High Court, the Appellant filed the present SLP before the Supreme Court.

Issue(s) at hand?

- Whether, for the purposes of computing limitation under Section 34(3) of the Act, the limitation period commences from the date of the original arbitral award or from the date on which the application filed under Section 33 of the Act came to be disposed of by the Arbitral Tribunal.

Findings of the Court

- The Hon'ble Supreme Court held that once a formal request under Section 33 of the Act is made and entertained by the Arbitral Tribunal, limitation under Section 34(3) of the Act starts from the date on which such request is disposed by the Arbitral Tribunal.
- Section 34(3) of the Act does not distinguish between Section 33 applications that are allowed or dismissed, nor does it require the application to be ultimately maintainable or successful. The Hon'ble Court held that the legislature did not impose any such restriction, and it would be impermissible for the Court to read one into the provision.
- The Hon'ble Court noted that the issue was no longer res integra and was covered by its earlier decisions in *Ved Prakash Mithal and Sons v. Union of India [2018 SCC OnLine SC 3181], USS Alliance v. State of U.P. [2023 SCC OnLine SC 778]*, and *Geojit Financial Services Ltd. v. Sandeep Gurav [2025 INSC 1021]*. It was held in these decisions that for computing limitation under Section 34(3) of the Act, the date of disposal of the Section 33 application is the starting point for filing a petition under Section 34 of the Act. The Hon'ble Court noted that parties cannot be compelled to file Section 34

proceedings while a *bona fide* Section 33 application is pending, as that would cause multiplicity of proceedings and procedural uncertainty.

- The Hon'ble Court further clarified that while Section 33 proceedings must be respected as a legitimate deferred trigger for limitation under Section 34(3) of the Act, this does not mean the provision is open to abuse. Where applications under Section 33 of the Act are found to be frivolous or *mala fide* filed solely for the purpose of defeating limitation under Section 34(3) of the Act, courts would be justified in imposing exemplary and punitive costs.

  Finally, the Hon'ble Court held that the certified copy of the common order dated 04.07.2022 disposing of the Section 33 applications was received by the Appellant on 15.09.2022, and the petition under Section 34 of the Act was filed on 07.11.2022. Even if the limitation period is calculated from the date on which the order disposing of the Section 33 applications was received, the applications filed under Section 34 were still filed within the time limit prescribed under Section 34(3) of the Act. Accordingly, the contention that the petition was barred by limitation was rejected. The Impugned Order passed by the Hon'ble High Court was set aside, the Sessions Court order condoning delay was restored, and the petition under Section 34 of the Act was directed to be decided on merits.

HSA
Viewpoint

The judgment of the Hon'ble Supreme Court is significant as it provides much-needed clarity on the computation of limitation under Sections 33 and 34 of the Act. Had the Court taken a different view, parties would have been compelled to file petitions under Section 34 of the Act as a precaution while their Section 33 applications were still pending. This would have led to duplication of proceedings and an unnecessary burden on the courts. The Hon'ble Supreme Court has avoided this outcome by clearly holding that the limitation period for filing a Section 34 petition begins only after the disposal of Section 33 application. The judgment leaves little room for ambiguity in the interpretation of these provisions and provides greater certainty to parties involved in arbitration. The Hon'ble Court has ensured that the ruling cannot be misused. By observing that frivolous or *mala fide* applications under Section 33 of the Act may attract exemplary or punitive costs, the Hon'ble Court has made it clear that Section 33 of the Act cannot be used as a tool to artificially extend the limitation period for challenging an award under Section 34 of the Act.

The High Court of Judicature at Bombay

Shakuntala T. Amrutkar & Others. Vs The Municipal Corporation of Greater Mumbai & Others.

Interim Application No. 6549/2025 In WP No. 729/2024

Background facts

- The present matter concerns the redevelopment of Kamla Bhuvan, a building located on L.B.S. Marg, Ghatkopar (West), Mumbai. The Petitioners i.e., the tenants and occupants of the said building have filed the main Writ Petition seeking directions against the Municipal Corporation and other Respondents to ensure that the redevelopment proceeds in accordance with Regulation 33(7)(A) of the DCPR-2034, while adequately safeguarding the rights of tenants throughout the process.
- The tenants contend that the redevelopment has been inordinately delayed, creating uncertainty around the execution of Permanent Alternate Accommodation Agreements. They have expressed apprehension that the landlords may fail to honour their obligations during the course of redevelopment.
- In light of these concerns, the tenants have filed the present Interim Application seeking impleadment of M/s. BS Lifespace i.e., the new/proposed developer as a party Respondent to the pending application. The tenants submit that the proposed developer has been actively involved in multiple facets of the redevelopment, including obtaining the Intimation of Disapproval (IOD), securing the Fire NOC, preparing and executing plans, conducting meetings with tenants, and coordinating various aspects of the redevelopment work. It is further submitted that settlement discussions between the landlords and the proposed developer have been ongoing for the past four to five months.
- Notably, several tenants have already executed Consent-cum-Declarations in favour of M/s. BS Lifespace, authorising it to undertake redevelopment activities for the property.

Issue(s) at hand?

- Whether M/s. BS Lifespace can be impleaded as a necessary and proper party to the redevelopment proceedings in the absence of a binding redevelopment agreement or any subsisting contractual relationship with the landlords.
- Whether a proposed developer's participation in settlement discussions, meetings, and other redevelopment-related activities is sufficient to create enforceable legal rights in its favour.

Arguments of the Parties

- Arguments by Petitioners (tenants):
  - The tenants submit that the redevelopment of Kamla Bhuvan has remained pending for a considerable period, leading to increasing uncertainty regarding the execution of Permanent Alternate Accommodation Agreements. This has consequently raised serious concerns over the protection of their redevelopment rights and the timely completion of the project.
  - It is further contended that M/s. BS Lifespace, the proposed developer, has actively participated in meetings with the tenants, coordinated redevelopment-related activities, secured requisite permissions and approvals, and undertaken various preliminary steps in connection with the project.
  - The tenants have also placed reliance on the fact that the matter has been repeatedly listed for settlement between the parties, and that a substantial number of tenants have executed Consent-cum-Declarations authorising the proposed developer to carry out redevelopment activities in respect of the property.
- Arguments by Respondents (landowner):
  - No redevelopment agreement or binding contract has been executed with M/s. BS Lifespace. Mere discussions or negotiations, in and of themselves, cannot be construed to create any enforceable legal rights in favour of the proposed developer.
  - It was further submitted that the original developer continues to remain associated with the redevelopment project. Consequently, the impleadment of another developer would unnecessarily complicate and enlarge the scope of the dispute pending before this HC.
  - The Respondents contend that the Interim Application is, in effect, an attempt to indirectly exert pressure upon them to enter into commercial arrangements with the proposed developer.

Findings of the Court

- The Bombay High Court undertook detail examination of the facts and made the following findings:
  - **Absence of Contractual Obligation**
    - No contract or redevelopment agreement has been executed between the parties.
    - In the absence of any enforceable contractual relationship, the proposed developer cannot claim an independent right to be impleaded in the proceedings.
  - **Participation in Redevelopment Activities**
    - Mere participation in meetings, settlement discussions, or preliminary redevelopment activities does not, by itself, create any legal entitlement in favour of a developer.
  - **Protection of Tenants' Rights**
    - The HC clarified that the rights of tenants remain adequately protected under the existing legal framework.
    - Relying upon Chandralok People Welfare Association vs. State of Maharashtra & Ors., 2023 SCC OnLine Bom 2300 and Anandrao G. Pawar vs. Municipal Corporation of Greater Mumbai and Ors., 2023 SCC OnLine Bom 2534, the HC observed that apprehensions regarding delay in redevelopment cannot justify the impleadment of a developer who otherwise lacks contractual rights in the project.
  - **Misuse of Proceedings**
    - The HC described the Interim Application as an attempt at a "back-door entry" by the proposed developer through the tenants.
    - It further noted that the proceedings appeared to be employed as a pressure tactic to compel the landlords to recognise the rights of the proposed developer, despite the absence of any enforceable agreement.
    - The HC clarified that if M/s. BS Lifespace has any separate contractual dispute or grievance against the original developers or any other party, it is at liberty to pursue independent legal remedies in accordance with law.
  - **The Bombay High Court** held that:
    - The proposed developer was neither a necessary nor a proper party in the absence of any binding redevelopment agreement with the landlords.
    - Mere participation in meetings, settlement discussions, or redevelopment-related activities does not create enforceable legal rights.
    - The Interim Application was accordingly dismissed with costs of ₹5,00,000/- (Rupees Five Lakhs Only), payable to the Bar Council of Maharashtra and Goa's Advocate Academy and Research Center within a period of two weeks

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Viewpoint

The present order underscores a fundamental principle: redevelopment arrangements must be clearly documented and legally binding before any developer can seek recognition or impleadment in judicial proceedings. The HC has reiterated that preliminary negotiations, meetings, or preparatory steps, absent a concluded and enforceable agreement, do not confer any substantive legal rights upon a proposed developer. At the same time, the HC has been careful to safeguard the interests of tenants in redevelopment projects. It reaffirmed the settled position that a person in actual possession of premises cannot be dispossessed merely by reason of redevelopment proceedings. Tenants are entitled to protection of their possessory rights and must be re-inducted into the redeveloped premises. While the registered owner retains the authority to execute the redevelopment agreement, such authority cannot be exercised to the detriment of lawful occupants. The order thus strikes a balance between ensuring orderly redevelopment under Regulation 33(7) and upholding the statutory and equitable rights of tenants.

The High Court of Judicature at Bombay, Bench at Nagpur

Aerocom Cushions Private Limited Vs. Assistant Commissioner (Anti-Evasion), CGST & CX, Nagpur-1

2026:BHC-NAG:348-DB
Writ Petition No. 2145 of 2025 (Decided on 23.05.2026)

Background facts

- The Petitioner, Aerocom Cushions Private Limited, was allotted an industrial plot by Maharashtra Industrial Development Corporation (MIDC), Hingna, Nagpur and held leasehold rights therein under a long-term lease of 95 years. The lease deed permitted transfer or assignment of the leasehold rights subject to obtaining prior approval from MIDC.
- In exercise of the rights available under the lease deed, the Petitioner assigned its leasehold rights in the industrial plot together with the factory premises standing thereon in favour of M/s. Rishita Industries, through its proprietor Mr. Sumit Madanlal Pagariya, for a consideration of Rs.1,50,00,000/-.
- The assignment was effected after obtaining the requisite consent from MIDC and upon payment of an additional premium of Rs.3,95,640/- as prescribed by MIDC for permitting such transfer.
- During the course of investigation, the GST authorities took a view that the consideration received by the Petitioner towards assignment of leasehold rights constituted consideration for a taxable supply of services under the Central Goods and Services Tax Act, 2017.
- Consequently, Respondent No.1 issued a Show Cause Notice dated 20.12.2024 under Section 74(1) of the CGST Act proposing to demand and recover GST amounting to Rs.27,00,000/- along with applicable interest and penalty. According to the Revenue, the assignment of leasehold rights was liable to GST as a supply of services under Section 7(1) of the CGST Act read with Schedule II.
- The Petitioner challenged the Show Cause Notice before the Bombay High Court, Nagpur Bench, contending that the transaction was not in the nature of a lease or sub-lease but an outright assignment of leasehold rights whereby all rights, title and interest of the Petitioner stood extinguished in favour of the assignee. It was therefore argued that the transaction amounted to transfer of benefits arising out of immovable property and fell outside the scope of GST.
- Upon considering the rival contentions, the Bombay High Court allowed the Writ Petition and quashed the aforesaid Show Cause Notice holding that assignment of leasehold rights in the facts of the case did not constitute a taxable supply under the GST regime.
- Aggrieved by the aforesaid judgment, the Respondents preferred a Special Leave Petition (Special Leave Petition (Civil) Diary No.26041/2026**)** before the Supreme Court of India. However, by order dated 22.05.2026, the Supreme Court declined to interfere with the judgment passed by Bombay High Court and dismissed the aforesaid Special Leave Petition.

Issue(s) at hand?

- Whether the assignment of leasehold rights in an industrial plot allotted by MIDC constitutes a “supply of services” under Section 7(1) of the CGST Act read with Schedule II thereto and is therefore liable to GST?
- Whether an assignment of leasehold rights and transfer of benefits arising out of immovable property, can be subjected to GST as a lease, sub-lease or any other taxable service?

Findings of Court

- The Court held that the transaction in question was an assignment of leasehold rights and not a lease or sub-lease. The Court noted that even the Show Cause Notice acknowledged that the Petitioner's rights stood extinguished upon assignment, thereby negating the possibility of the transaction being treated as a sub-lease.
- The Court rejected the Respondents’s attempt to classify the transaction as taxable under the category of "other miscellaneous services". It observed that such classification was misconceived and could not be extended to assignment of leasehold rights in immovable property.
- The Court further held that the transaction amounted to transfer of benefits arising out of immovable property and that the essential element of "supply of service" in the course or furtherance of business was absent.

- Relying upon the decision in *Gujarat Chamber of Commerce and Industry v. Union of India*[1], the Court held that assignment of leasehold rights in favour of a third party constitutes transfer of benefits arising out of immovable property and therefore does not attract GST.
- The Court also observed that the principles laid down by the Gujarat High Court were binding upon the authorities in the absence of any contrary view by another competent High Court, placing reliance upon *Commissioner of Income-Tax, Vidarbha v. Smt. Godavari Devi Saraf*[2].
- Accordingly, the Court allowed the Writ Petition and quashed and set aside the Show Cause Notice dated 20.12.2024 issued under Section 74(1) of the CGST Act. Aggrieved by the said judgment, the Respondents preferred a Special Leave Petition before the Supreme Court. However, the Supreme Court declined to interfere with the judgment of the Bombay High Court, Nagpur Bench and dismissed the Special Leave Petition.

[1] 170 taxmann.com 251 (Gujarat)
[2] (1978) 113 ITR 589

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