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Dispute Resolution & Arbitration

Monthly Update

AUGUST- SEPTEMBER 2026

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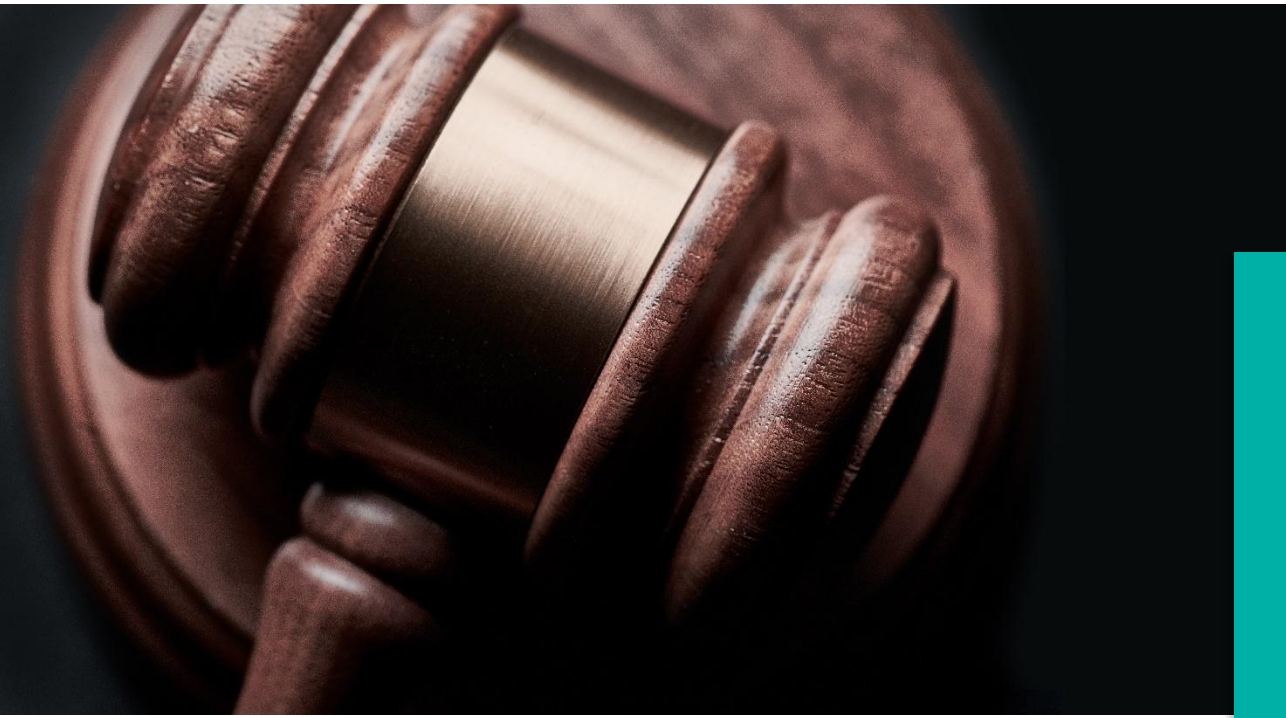
DISPUTE RESOLUTION AND ARBITRATION UPDATE



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In The Supreme Court of India, Civil Appellate Jurisdiction

The Authorised Representative for Granite Gate Properties Private Limited, Ms. Rakesh Verma [Appellant] Vs. M/s New Okhla Industrial Development Authority and Ors. [Respondents] (With Connected Civil Appeal No. 4207 of 2026).

Civil Appeal No.3132 of 2026 (with Civil Appeal No.4207 of 2026), 2026 INSC 952 (Decided on 03.09.2026)

Background facts

- M/s Granite Gate Properties Private Limited ("the Developer") took two plots of land on perpetual lease, at a high premium, from the New Okhla Industrial Development Authority ("NOIDA") in Sector 100 and Sector 110, for developing residential projects namely 'Lotus Boulevard' and 'Lotus Panache' respectively.
- However, the Developer defaulted and subsequently admitted into Corporate Insolvency Resolution Process ("CIRP"), the insolvency commencement date being 10.01.2019. It is pertinent to note that the Committee of Creditors ("CoC") was constituted completely of homebuyers, who qualified as financial creditors.
- While the CIRP was ongoing the homebuyers pooled their own personal resources to fund and carry out the construction as a going concern, under the approval of CoC's 'Pool and Build' mechanism.
- M/s SMV Agencies Private Limited ("SRA") submitted a Resolution Plan which was approved by the CoC. Pending implementation, on 16.10.2024, NOIDA sealed three towers of Lotus Panache, pending the resolution of a dispute over 'time extension charges' payable under the lease deed for delay in completion.

- As per the original lease deed, time extension charges were payable at 4%, 5% and 6% of the premium for the years of delay in first, second and third respectively, with the lease itself being liable to cancellation thereafter. NOIDA issued an office order dated 18.10.2019 at its own discretion extending this scheme up to the tenth year, at increasing rates.
- While approving the Resolution Plan the NCLT directed that the time extension charges under both lease deeds be considered as CIRP cost, but only for the maximum period of three years which was originally stipulated in the lease deeds.
- The Authorised Representative of the homebuyers ("AR") appealed against the inclusion of these charges as CIRP cost. NOIDA cross-appealed, opposing it by claiming they are entitled to time extension charges for the extended period up to the tenth year under its 2019 office order, and that this too ought to be included as CIRP costs.

Issue(s) at hand?

- Whether time extension charges levied by NOIDA under the lease deeds, for delay in completion of the project, can be treated as 'CIRP costs' under Section 5(13) of the Insolvency and Bankruptcy Code, 2016.
- If such charges are includible as CIRP costs, whether they can be claimed for the period preceding the insolvency commencement date, or only for the period thereafter.
- Whether NOIDA was entitled to claim time extension charges for a period beyond the three years stipulated in the original lease deeds, on the strength of its subsequent office order dated 18.10.2019.

Findings of the Court

- The Supreme Court (J.B. Pardiwala and K. Vinod Chandran, JJ.) examined both the lease deeds and held that the land had been acquired and leased by NOIDA for the development of an urban and industrial township, including housing being a public welfare function and not a commercial venture for profit, even though NOIDA does generate revenue in the process.
- The Court noted that the time extension charges were penal in nature, intended to avoid delays and defaults by the developer. However, in this case, the default was entirely attributable to the original developer (the Corporate Debtor); the homebuyers had, on their own initiative, pooled resources to complete construction, and the SRA had stepped in only after the resolution process.
- The Court held that it would not be appropriate to put the penalty charges on homebuyers and the SRA which should have been the liability of Corporate Debtor's because of his past defaults, particularly where the authority levying the charge is itself a local development authority whose primary purpose is public welfare rather than profit.
- Accordingly, the Court set aside the NCLAT's direction considering the time extension charges as CIRP costs, and held that NOIDA ought to waive the penalty charges altogether in the peculiar facts of the case.
- NOIDA's claim for time extension charges for the extended period up to the tenth year, as per its 2019 office order, was also rejected.
- Civil Appeal No. 3132 of 2026 (filed by the AR/homebuyers) was allowed; Civil Appeal No. 4207 of 2026 (filed by NOIDA) was dismissed.

HSA
Viewpoint

This decision did not strike down the time extension penalty, but it applied equitable relief to homebuyers who have been already left without possession for nearly a decade and financed the completion of their own home after the original developer's insolvency.

The Court instead of laying down a blanket rule that lease-related penalty charges can never form part of CIRP costs rather, it has based its reasoning by the facts that the delay was attributable to the original developer/Corporate Debtor, which had subsequently entered insolvency, and neither the homebuyers nor the SRA was responsible for that default. The Court, particularly noted that the homebuyers had pooled their own resources under a "Pool and Build" mechanism to keep construction going, the Court held that making them bear such charges would effectively penalise them for the "past sins" of the Corporate Debtor and would impede, rather than facilitate, completion of the stalled project.

It is pertinent to note that the judgment also places weightage on the public character of a development authority such as NOIDA. By categorizing NOIDA's leasing function as a public welfare initiative rather than a commercial one, the Court has pointed out that statutory authorities cannot mechanically enforce penal clauses in situations where doing so would defeat the very purpose timely and affordable housing which the said scheme was designed to serve.

For resolution professionals and successful resolution applicants navigating real-estate insolvencies, this ruling offers a useful precedent to decline the inclusion of pre-existing penal liabilities of the Corporate Debtor as CIRP costs, particularly while doing so would ultimately be passed on to homebuyers or the SRA.

In The Supreme Court of India, Civil Appellate Jurisdiction

Kotak Mahindra Bank Limited [Appellant] Vs. Trupti Sanjay Mehta and Others [Respondents]

Civil Appeal No. 8531 of 2015, 2026 INSC 943 (Decided on 02.09.2026)

Background facts

- City Financial Consumer Finance Limited ("CFCFL"), a non-banking financial company, extended a home loan of ₹69,60,000/- to Amit Bipin Shah (Respondent No. 4) for buying a residential flat from Trupti Sanjay Mehta and Sanjay Walchand Mehta (Respondent Nos. 1 and 2). When the loan was disbursed, CFCFL was not notified as a 'financial institution' under Section 2(1)(m) of the SARFAESI Act.
- By a Deed of Assignment dated 18.07.2012, CFCFL assigned the said debt in favour of Kotak Mahindra Bank Limited ("KMBL"/ "the Bank"), a bank covered under the SARFAESI Act.
- Upon Amit Bipin Shah's default, KMBL issued a notice dated 03.07.2013 under Section 13(2) of the SARFAESI Act calling upon him to pay ₹1,10,39,111/- with interest. However, Mr. Shah did not respond to that notice and therefore, KMBL initiated steps to enforce its security.
- The Mehtas resisted enforcement by stated that when the loan was granted the CFCFL was not a notified financial institution, the debt could never sit in the category of a 'secured debt' amenable to the SARFAESI Act irrespective of the subsequent assignment to a notified bank.
- The DRT and the Debt Recovery Appellate Tribunal and also the Bombay High Court accepted this contention and ruled against KMBL.
- Two connected appeals arising from similar facts were heard together: in the Poorti Rent-a-Car matter, the secured property had already been sold in 2023; in the Sable matter, the securitisation application had already been dismissed for delay, and KMBL sought to invoke Section 14 of the SARFAESI Act to take physical possession.
- Aggrieved by the Bombay High Court's view, KMBL moved to the Hon'ble Supreme Court with the present appeals.

Issue(s) at hand?

- Whether a bank covered under the SARFAESI Act can invoke the Act to recover a debt that it acquired by assignment from an NBFC which was not, at the time the loan was originally disbursed, a notified 'financial institution' under Section 2(1)(m) of the Act.
- Whether such a debt, upon assignment, immediately acquires the statutory attributes of a 'secured debt' in the hands of the assignee bank, regardless of the assignor's status at the time of disbursement.
- Whether, in the connected Sable matter, KMBL was entitled to invoke Section 14 of the SARFAESI Act to take physical possession of the secured asset once the corresponding securitisation application stood dismissed on the ground of delay.

Findings of the Court

- The Hon'ble Supreme Court held that once a bank or financial institution which is under the SARFAESI Act gets a non-performing secured loan by assignment, the account immediately acquires all the statutory attributes of a secured debt regardless of the fact that whether the originating NBFC was itself a notified financial institution at the time the loan was disbursed.
- The Bench held that the Hon'ble Bombay High Court was incorrect in the view it took in the case of the Mehta's, and that the position stood squarely covered by the Court's earlier decisions in M.D. Frozen Foods Exports (P) Ltd. v. Hero Fincorp Ltd[1]. and Indiabulls Housing Finance Ltd. v. Deccan Chronicle Holdings Ltd[2].
- As other factual and legal issues raised in the securitisation application had not been examined on merits, the application is restored to the DRT for fresh adjudication, subject to an additional deposit being made by the borrowers.

[1] M.D. Frozen Foods Exports (P) Ltd. v. Hero Fincorp Ltd., (2017) 16 SCC 741

[2] Indiabulls Housing Finance Ltd. v. Deccan Chronicle Holdings Ltd. & Ors., Civil Appeal No. 18 of 2018, decided on 23.02.2018 (2018 INSC 200)

- In the connected Poorti Rent-a-Car matter, the Court found the issue covered by the same line of authority; since the secured property had already been sold in 2023, no further relief was called for.
- In the connected Sable matter, the Court held that KMBL was legally entitled to invoke Section 14 of the SARFAESI Act to take physical possession of the secured property, as the corresponding securitisation application had already been dismissed for delay.
- Accordingly, Civil Appeal No. 8531 of 2015 was allowed and the two connected appeals were dismissed. Pending intervention applications were also dismissed, with parties directed to bear their own costs.

HSA
Viewpoint

Settles a live inter-institutional split among coordinate Bombay High Court benches and closes a structural loophole under which loans passing from NBFCs (outside SARFAESI) to banks (inside SARFAESI) could otherwise be shielded from the Act's summary recovery mechanism.

In the past, borrowers had some success before the DRT, DRAT and the Bombay High Court, in defending SARFAESI enforcement on the ground that the originating NBFC was not a notified financial institution when the loan was disbursed.

The judgement establishes that SARFAESI's applicability tracks the *holding institution's* coverage at the time recovery is sought and not the lender's status at the debt's inception thereby reinforcing the "live and owing" test as the operative principle for successor-in-interest recovery claims generally. Therefore, once a SARFAESI- covered bank takes the position of the original lender, the debt carries with it the full statutory attributes of a secured debt.

In doing so, the Court has extended the assignee - lender line of reasoning first laid down in M.D. Frozen Foods and reaffirmed in Indiabulls Housing Finance, effectively completing that trilogy in the specific context of NBFC to bank assignments. The decision also clarifies, through the connected appeals, that the same enforcement logic applies with equal force to physical possession under Section 14 once a securitization application has failed on procedural grounds such as delay.

This will have a significant impact on Bank's confidence in purchasing and resolving Nonperforming assets from financial institutions not included under SARFAESI. They can also have full legal backing to recover the dues. The Borrowers cannot use the earlier defense to resist the speedy recovery process of SARFAESI.

In The Supreme Court of India, Civil Appellate Jurisdiction

M/s. Saudi Arabian Airlines [Appellant(s)] Vs. Union of India & ors. [Respondent(s)]

Civil Appeal No. 1052 of 2013, 2026 INSC 933, (Decided on 01.09.2026)

Background facts

- The Appellant, an airline company, was, under the Finance Act, 1979 ("**the Finance Act**") and the Foreign Travel Tax Rules, 1979 ("**the 1979 Rules**"), required to collect Foreign Travel Tax ("**FTT**") from passengers embarking on international journeys and to deposit the same into the Government treasury within 30 days of the end of the concerned month.
- On six occasions between August 1994 and November 1997, there was delay on part of the Appellant in depositing the FTT so collected, ranging from 1 day to 63 days. In five of the six instances, the Appellant had procured the requisite demand drafts before the due date itself; the delay occurred only in physically depositing the drafts into the treasury.
- Show cause notices were issued proposing recovery of tax, interest and penalty under Section 38 of the Finance Act. By order-in-original dated 14.06.1999, the adjudicating authority confirmed a penalty of Rs. 12,000 for the six instances of delayed deposit of FTT.
- On appeal, the matter was remanded for de novo consideration. On remand, by de novo order-in-original dated 08.08.2001, the adjudicating authority **enhanced** the penalty for the very same six instances of delayed deposit from Rs. 12,000 to Rs. 71,29,140, applying the minimum penalty prescribed under Section 38(3) of the Finance Act.
- The appellate authority, by order dated 09.01.2003, upheld the enhanced penalty, holding that the adjudicating authority had, in the de novo order, only imposed the minimum penalty provided under the statute, which had been inadvertently overlooked in the initial order-in-original. The revisional authority (Government of India, Ministry of Finance), by order dated 29.10.2004, likewise upheld the enhanced penalty, holding that imposition of penalty upon delayed deposit of FTT was automatic and that no discretion existed to impose a penalty below the minimum statutory amount.
- Aggrieved, the Appellant preferred Writ Petition No. 3269 of 2004 before the Bombay High Court, which came to be dismissed by judgment dated 09.08.2010, holding that (i) delayed payment of FTT is equivalent to failure to pay the tax under Section 38(3) of the Finance Act; (ii) no mens rea is required for imposition of penalty for breach of a civil obligation; and (iii) the remand was not a limited remand, so that enhancement of the penalty on remand was permissible.
- Aggrieved by the aforesaid judgment and order of the High Court, the Appellant preferred the present appeal before the Hon'ble Supreme Court.

Issue(s) at hand?

- Whether penalty under Section 38(3) of the Finance Act, 1979 is attracted where a carrier merely delays deposit of FTT already collected, or whether such penalty is confined to cases of non-payment of the tax?
- Whether the harsher penalty prescribed under Section 38(3) governs cases of belated, as opposed to non-existent, payment of FTT?
- Whether imposition of penalty upon breach of the timelines prescribed under the Finance Act and the 1979 Rules is automatic, or whether the adjudicating authority retains discretion to determine whether penalty ought to be imposed at all, having regard to the circumstances of delay?
- Whether an appellant can be placed in a worse position, by way of an enhanced penalty on remand, merely for having exercised its statutory right of appeal?

Findings of the Court

- The Hon'ble Supreme Court held that the expression "fails to pay the foreign travel tax" occurring in Section 38(3) of the Finance Act denotes non-payment of tax, and cannot be equated with mere delay in payment of tax that has already been collected and remitted, albeit belatedly, to the credit of the Central Government. Prior to arriving at its conclusion, the Hon'ble Court dealt extensively with the provisions of the statute, 1979 Rules and case laws.
- Relying upon its earlier decision in *U.S. Technologies International Private Limited v. Commissioner of Income Tax*[1], wherein belated remittance of tax deducted at source was held not to amount to

[1](2023) 8 SCC 24

"failure to deduct" tax under Section 271-C of the Income Tax Act, 1961, the Court held that delayed deposit of FTT falls outside the scope of Section 38(3).

- The Court cautioned and elucidated further that if the payment of tax is made before the Show Cause Notice it may be considered as a delayed payment whereas payment of tax after issue of Show Cause Notice was certainly not eligible to be considered as a delayed payment of tax and was squarely non-payment of tax.
- The Court noted that Rules 4 and 9 of the 1979 Rules empower the Collector of Customs to condone delay in deposit of tax and filing of returns, respectively, on sufficient cause being shown, and that the authorities below had failed to consider whether the Appellant's explanations for the delay warranted such condonation.
- The Court held that imposition of penalty under Section 38, whether under sub-section (2), (3) or (4), is not automatic merely because there is a breach of the statutory timeline, notwithstanding the use of the word "shall". Relying upon *Hindustan Steel Ltd. v. State of Orissa*[2], the Court reiterated that even where a minimum penalty is prescribed, the authority retains discretion to refrain from imposing penalty where the breach is technical or venial, or flows from a bona fide belief.
- Distinguishing between the requirement of mens rea and the automatic imposition of penalty, the Court clarified that while penalty for breach of a civil obligation under a fiscal statute does not require proof of mens rea — as held in *Gujarat Travancore Agency v. Commissioner of Income Tax*[3] and other cases — this does not render imposition of penalty a foregone conclusion; the adjudicatory process contemplated under Rule 12 of the 1979 Rules would otherwise be rendered nugatory.
- On facts, the Court held that no penalty was imposable upon the Appellant for the six instances of delayed deposit of FTT, as this was not a case where FTT had not been paid at all and the delay was capable of condonation under Rule 4, and the authorities had accordingly failed to exercise the discretion vested in them before imposing penalty.
- The Court further held that enhancement of the penalty from Rs. 12,000 to Rs. 71,29,140 on remand, pursuant to an appeal filed by the Appellant itself, was impermissible, applying the principle of *reformatio in peius* — that a person cannot be placed in a worse position as a result of having availed a remedy provided in law. The Court relied upon its recent decision in *Nagarajan v. State of Tamil Nadu*[4] and the decision of the Bombay High Court in *Jyoti Plastic Works Pvt. Ltd. v. Union of India*[5].
- Accordingly, the Court set aside the impugned judgment of the High Court, the revisional order dated 29.10.2004, the appellate order dated 09.01.2003, and the de novo order-in-original dated 08.08.2001, insofar as they imposed penalty on the Appellant for late deposit of FTT, and directed refund of any penalty amount paid, together with interest at the rate of 9% per annum, within three months.

HSA
Viewpoint

Pertinently, although from the stage of the adjudicating authority to the subject proceeding before Hon'ble Supreme Court the matter was pending for a considerable time, order directing the refund of the amounts and the quashing of orders of High Court as well as other authorities amounts to a huge relief for carriers and other assesses. The present judgment is also a welcome and significant clarification for carriers and other assessee who face steep, minimum-bound penalties for statutory default under fiscal statutes.

By drawing a clear textual distinction between "failure to pay" and "delay in payment," the Hon'ble Supreme Court has confined the harsher penalty under Section 38(3) of the Finance Act to essentially cases of non-payment. The decision therefore reinforces the settled principle that penal consequences under a fiscal statute must be construed strictly in accordance with the plain language used, without judicial expansion.

The judgment also usefully reiterates that as section 38 (4) does not contemplate an automatic penalty. Following settled precedents, that even under strict-liability fiscal provisions, adjudicating authorities are obliged to apply their mind to whether a breach is technical, venial, or bona fide before imposing penalty - a discretion that the show-cause and hearing process under Rule 12 of the 1979 Rules is specifically designed to preserve. Equally significant is the Court's application of the principle of *reformatio in peius to tax* and penalty proceedings, holding that an assessee cannot be placed in a worse position merely because it chose to exercise its statutory right of appeal

[2](1972) 83 ITR 26
[3](1989) 3 SCC 52
[4](2025) 8 SCC 331
[5]2020 SCC online Bom 2276

In The High Court of Judicature at Bombay (Ordinary Original Civil Jurisdiction — Commercial Division)

Kiran Narendra Patkar [Applicant] Vs. Milan Narendra Patkar & Anr. [Respondents]

Comm Arbitration Application (L) No. 23278 of 2026 with Comm Arbitration Petition (L) No. 23009 of 2026, (Decided on 27.08.2026)

Background facts

- The dispute relates to a property known as 'Patkar House', situated at Dadar, Mumbai. On 18 December 2024, a Development Agreement was entered into between the Applicant, in his capacity as Developer, and the Owners, namely his father, Late Narendra Dattaram Patkar, and his mother, Respondent No. 1. Under the Agreement, the Applicant was granted full, exclusive and irrevocable rights to redevelop the property. Vacant and peaceful possession of Patkar House was also handed over to him, and the Owners expressly agreed not to create any third-party rights or interests in the property. The Development Agreement further contained an arbitration clause under Clause 22.
- Narendra Dattaram Patkar subsequently passed away on 14 April 2025. According to the Applicant upon the death of Narendra Dattaram Patkar, all rights, interests, obligations and liabilities arising from the Development Agreement, including the arbitration agreement, devolved upon his estate and legal heirs, including Respondent No. 1, and continued to remain binding upon them.
- The Respondent No. 1 executed a Gift Deed dated 4 February 2026 in favour of Respondent No. 2 in respect of the same property. According to the Applicant, the execution of the Gift Deed amounted to a direct violation of the restrictive covenants contained in the Development Agreement and materially prejudiced his contractual and redevelopment rights. The dispute escalated in April 2026 when Respondent No. 2, relying upon the Gift Deed, allegedly attempted to enter the property and interfere with the Applicant's possession and redevelopment activities.
- In view of the ensuing dispute, the Applicant issued a notice dated 15 June 2026 under Section 21 of the Arbitration and Conciliation Act, 1996, invoking the arbitration agreement and calling upon the Respondents to refrain from interfering with his rights under the Development Agreement. The Applicant also nominated a former Judge of the Bombay High Court as the Sole Arbitrator. However, by their reply dated 18 June 2026, the Respondents denied having knowledge of the Development Agreement, raised allegations of fraud and forgery against the Applicant, and declined to consent to the appointment of the nominated arbitrator.
- As the contractual mechanism for appointment of the arbitrator consequently failed, the Applicant approached the **High Court of Judicature at Bombay** by filing a Commercial Arbitration Application under Section 11(6) read with Section 11(12)(a) of the Arbitration and Conciliation Act, 1996, seeking the appointment of a Sole Arbitrator. A connected Commercial Arbitration Petition was also filed.
- Respondent No. 1 opposed the application primarily on the grounds that the Development Agreement was forged, unregistered and insufficiently stamped. Respondent No. 2, on the other hand, challenged the Applicant's claim on the ground that she was a non-signatory to the Development Agreement and asserted independent ownership rights over certain shops forming part of the property. These rights were claimed on the basis of an earlier Gift Deed dated 23 January 2024, which had not been disclosed at the outset.

Issue(s) at hand?

- Whether there is sufficient material to prima facie show that an arbitration agreement exists between the Applicant and Respondent No. 1, so that an Arbitral Tribunal can be constituted?
- Whether the allegations of forgery and fabrication made by Respondent No. 1 are of such a nature that the Court should finally decide them before the arbitration can proceed?
- Whether, in relation to Respondent No. 2, who claims that she has not signed the Development Agreement and asserts independent rights in Shop Nos. 1 and 2 under the earlier Gift Deed dated 23 January 2024, the issue requires consideration at the Section 11 stage?

Findings of the Court

- The Hon'ble High Court observed that a party cannot be compelled to arbitrate merely because the opposing party produces a document containing an arbitration clause. Since consent is the foundation of arbitration, the existence of a valid arbitration agreement must be established before a party can be referred to arbitration. However, relying on paragraphs 15 and 20 of *Rajia*

Begum[1], the Court held that where the very arbitration agreement is alleged to be forged, the issue is not merely a dispute concerning the underlying contract. It directly concerns the jurisdiction of the Arbitral Tribunal and therefore requires appropriate consideration.

- The Court, however, made it clear that a mere allegation of fraud or forgery is not sufficient to defeat an application under Section 11. Referring to paragraphs 12 and 13 of *Rajia Begum*, the Court held that the exception would apply only where the material on record clearly establishes that the party against whom the breach is alleged could not have entered into the arbitration agreement in the first place. On the facts before it, the Court found that this threshold had not been met.
- The Court further noted that the Applicant's case was not based exclusively on the disputed Development Agreement. The registered Will dated 11 April 2025 executed by Late Narendra Patkar, as well as Recital C of the subsequent Gift Deed dated 4 February 2026, referred to the same redevelopment transaction. Since these were independently executed documents, they provided prima facie corroboration of the Applicant's case regarding the existence of the Development Agreement and the arbitration clause contained therein.
- Relying on *Ajay Madhusudhan Patel*[2], particularly paragraph 76.5 of it, the Court emphasised that questions concerning the existence or validity of an arbitration agreement, where their determination depends upon disputed evidence, should ordinarily be left to the Arbitral Tribunal. The Tribunal has the power under Section 16 to determine its own jurisdiction. In the present case, questions relating to the execution, capacity of the parties and genuineness of the Development Agreement involved disputed facts and evidence. Determining these issues conclusively at the Section 11 stage would effectively require the Court to conduct a trial, which was not appropriate at the referral stage.
- The Court also referred to the caution expressed in *SBI General Insurance Co. Ltd. v. Krish Spg*[3]., as discussed in *Ajay Madhusudhan Patel*. It noted that if the referral Court undertakes an extensive examination of disputed facts at the Section 11 stage, it risks entering into matters that properly fall within the jurisdiction of the Arbitral Tribunal. Such an approach could also leave a claimant without an effective remedy if the Section 11 application were rejected. A detailed factual inquiry at this preliminary stage would therefore be inconsistent with the objective of ensuring an efficient and expeditious arbitral process.
- With respect to the objections concerning the non-registration and insufficient stamping of the Development Agreement, the Court treated these as questions relating to the enforceability of the underlying agreement rather than the preliminary question of whether an arbitration agreement existed. The Court held that such objections could not be used to expand the scope of a Section 11 proceeding into a comprehensive examination of the enforceability of the entire Development Agreement.
- The Court also considered the position of Respondent No. 2, who was admittedly a non-signatory to the Development Agreement and claimed independent ownership rights on the basis of an earlier Gift Deed dated 23 January 2024. Relying on *Cox & Kings Ltd. v. SAP India (P) Ltd*[4]., as recognised in paragraph 76.7 of *Ajay Madhusudhan Patel*, the Court held that determining whether a non - signatory can nevertheless be bound by an arbitration agreement involves a substantive jurisdictional question. Such a question is appropriately examined by the Arbitral Tribunal under Section 16 rather than being conclusively decided by the referral Court at the Section 11 stage.
- The Court also found some merit in the Respondents' contention that the Applicant had not disclosed the earlier Gift Deed dated 23 January 2024 when filing the Section 11 application. Nevertheless, it held that even if such non-disclosure were established, it would not, by itself, invalidate or extinguish the arbitration agreement between the Applicant and Respondent No. 1. The significance of the alleged non-disclosure was primarily relevant to the independent rights asserted by Respondent No. 2.
- Accordingly, the Court allowed the Section 11 application and appointed a Sole Arbitrator to adjudicate the disputes between the Applicant and Respondent No. 1. At the same time, the Court expressly left all disputed questions relating to the existence, execution, genuineness, validity and enforceability of the Development Agreement to be considered by the Arbitral Tribunal under Section 16. The question of whether Respondent No. 2, as a non-signatory, was bound by the arbitration agreement was also left open for determination by the Tribunal.
- The Court clarified that its observations were confined to the limited inquiry required at the Section 11 stage and should not be treated as final findings on the merits of the parties' respective

HSA
Viewpoint

In our view, the judgment strengthens the pro-arbitration approach by reaffirming that proceedings under Section 11 should remain limited to a prima facie examination of the existence of an arbitration agreement and should not become a forum for detailed adjudication on facts.

The judgment provides useful clarity on allegations of fraud and forgery, recognising that while such allegations cannot be ignored where they challenge the very existence of consent to arbitrate, a mere allegation, without sufficient prima facie material, cannot by itself prevent a reference to arbitration.

The decision is particularly significant for property and development disputes, where questions relating to execution, succession, title and competing rights often arise. By leaving such evidence-dependent issues to the Arbitral Tribunal, the judgment is likely to reduce delays at the referral stage and facilitate the timely commencement of arbitral proceedings, while preserving the Tribunal's jurisdiction under Section 16 to determine such issues.

[1] 2026 SCC OnLine SC 135
[2] (2025) 2 SCC 147
[3] (2024) 12 SCC 1 : 2024 SCC OnLine SC 1754
[4] (2024) 4 SCC 1

claims or defences. The Respondents' oral request seeking a stay of the judgment was also rejected.

In The High Court Of Madhya Pradesh at Indore Moshers [Petitioner] Vs. Shri Mittal Agritech Pvt. Ltd. [Respondents]

Arbitration Case No. 56 of 2024 (Neutral Citation No. 2026:MPHC-IND:23867), Decided on 21.08.2026

Background facts

- The petitioner filed an application under Sections 44 to 49 of the Arbitration and Conciliation Act, 1996, seeking the enforcement of a foreign arbitral award dated 26 August 2022 ("**Foreign Award**") passed by sole Arbitrator J. Hawkins in GAFTA Arbitration Case No. 18-634.
- Vide an order dated 8th May 2026, the High Court determined the award was enforceable as a decree of the Court, rejecting the Respondents' objections regarding its enforceability, and set the matter for execution proceedings.
- During the execution stage, the Respondents raised an oral objection, arguing that since the Foreign Award was a deemed decree of the Court and was to be executed as any other decree and as per provisions of CPC, the High Court lacking ordinary original civil jurisdiction and the necessary execution machinery (like a Nazarat Department) cannot execute the decree.
- The Respondent asserted therefore that the Foreign Award must be transferred to a District Court or Commercial Court for actual execution. The necessary power to transfer is available under Sections 39(1)(d) and 39(2) of CPC.
- The Hon'ble Court was thus required to decide whether the Foreign Award could be executed by it.

Issue(s) at hand?

- Whether a single, composite application for both deciding the enforceability of a foreign arbitral award and its subsequent execution is maintainable, or if separate proceedings are required?
- Whether the High Court has the power to execute the foreign award once it is deemed a decree under the Arbitration and Conciliation Act, 1996, despite the Court not possessing ordinary original civil jurisdiction, or whether the decree must be transferred to a subordinate District or Commercial Court for execution?

Findings of Court

- The Petitioner had filed the subject Petition under Sections 47, 48, and 49 of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**") thereby pleading for enforceability and execution by way of a single proceeding. The Court vide its earlier order had already affirmed the Foreign Award to be enforceable. relying upon the Supreme Court's decision in Fuerst Day Lawson Ltd. vs. Jindal Exports Ltd[1]. the Court asserted that under, the enforceability and execution of a foreign award may be proceeded with in one and the same proceeding to avoid multiplicity of litigation. This finding also stemming from the observation that if a foreign award is enforceable, it is akin to any other decree.
- The aims of Arbitration Act were also considered, and it was observed that the legislature intended that every foreign arbitral award is to be enforced as it if were a decree of Court.
- Citing the definition of "Court" in the explanation to Section 47 of Arbitration Act, the Court observed that it is clearly provided that the High Court is the competent Court for deciding enforceability and the award is required to be executed also by the High Court itself. Pertinently, this principle is in line with what was held by the Gujarat High Court in *M/s. OCI Corporation Vs. Kandla Export Corporation & Others*[2] . In the said case, Gujarat High Court was faced with a similar dilemma i.e. lack of original civil jurisdiction. However, upon a detailed study and interpretation of Section 47, the Division Bench of Gujarat High Court has held that the execution petitions for enforcement of the foreign award are required to be considered, dealt with and disposed of by the Commercial Division of the High Court or the concerned High Court, as the case may be. The Court of enforcement therefore is the Court for execution as well.
- Regarding the Respondents' rather technical objection about the lack of execution machinery in the High Court such as a Nazarat Department, the Court clarified that if and when any practical difficulty emerged in execution it was within their prerogative under Section 39 of CPC to transfer the proceedings to any competent court.

[1](2001) 6 SCC 356
[2]Neutral Citation 2016: GujHC: 44379 – DB

- Lastly, considering that a foreign award was similarly executed in another case being *Cereales Y. Servicios Agricolas de Burgs S.L. Vs. Sethi Agritech Pvt. Ltd*[3]. the Court directed that the execution must proceed under Order XXI of the CPC and necessary compliances may be carried out by the Registry for the ensuring the application for execution was in proper form.

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Viewpoint

This is a useful judgment on **Sections 47–49 of the Arbitration Act**, particularly for the proposition that enforcement and execution of a foreign award can continue before the same High Court in a single proceeding.

This ruling reinforces the pro-enforcement regime for foreign arbitral awards in India. By reiterating that the enforceability and execution of a foreign award can be pursued through a single, composite proceeding, the Court has effectively closed the door on procedural fragmentation and multiplicity of proceedings that is often used to delay recovery.

This ensures that a party cannot force unnecessary transfers to subordinate courts under Section 38 or 39 of the CPC merely to stall the realisation of the award. The decision is also sound on the principle that mere formalities ought not to defeat the ends of justice. As a foreign award which is declared enforceable is akin to a deemed decree, nothing further would be achieved by filing a separate application again for its execution.

The Court also chose to interpret Section 47 in light of the objectives of the Arbitration Act and on a plain reading of the provisions held that the "Court" which had the power to decide on enforceability also had the necessary capability to execute that award even if it is a High Court lacking ordinary original civil jurisdiction.

[3] MCC No. 1834/2023

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