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LAW ADVISORY

Arbitration Newsletter

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Divya Enterprise & Ors. v. Capri Global Capital Ltd., 2025 SCC OnLine Bom 3783 - Bombay High Court holds that enforcement of mortgage is non-arbitrable despite arbitration clauses in loan and mortgage agreements

The Court reaffirmed that actions involving enforcement or redemption of mortgage constitute rights in rem, which require public adjudication and cannot be referred to arbitration under Section 8 of the Arbitration and Conciliation Act, 1996.

The case arose from a commercial suit filed by the Plaintiff, a financial institution, seeking recovery of over INR 17.31 crores and enforcement of mortgage rights against the Defendants, a group of developers, in relation to loans advanced for the redevelopment of a housing project at Kandivali, Mumbai. The Plaintiff also sought a declaration that its mortgage rights were valid and subsisting, along with ancillary injunctions restraining the Defendants and the cooperative society involved in the project from alienating the mortgaged property or issuing no-objection certificates to third parties.

Defendant Nos. 1 to 4 filed an application under Section 8 of the Arbitration and Conciliation Act, 1996 ("Arbitration Act"), seeking reference of the dispute to arbitration, arguing that both the loan agreements and the indentures of mortgage contained arbitration clauses. They contended that the suit, being based on the same contractual matrix, was governed by these clauses. The Defendants further submitted that the Plaintiff's claim, being a money recovery action arising out of contractual obligations, was a right in personam and hence arbitrable.

The Plaintiff opposed the application, arguing that the suit primarily sought enforcement and redemption of mortgage rights, which constitute rights in rem and therefore fall outside the purview of private arbitration. It was contended that the presence of the cooperative housing society (Defendant No. 5), which was not a party to any arbitration agreement, further rendered the dispute incapable of reference to arbitration.

The Defendants, in turn, relied on *M.D. Frozen Foods Exports Pvt. Ltd. v. Hero Fincorp Ltd.*, (2017) 16 SCC 741, to argue that claims by financial institutions are rights in personam and hence arbitrable. It was further argued that the Plaintiff had deliberately impleaded the cooperative society as a tactic to avoid arbitration and that all disputes between the Plaintiff and the developers could be consolidated before a single arbitral tribunal.

The Court began by summarising the nature of reliefs sought, observing that while the monetary recovery claim might appear arbitrable, the

principal reliefs involved enforcement and redemption of mortgages. Such reliefs, the Court noted, concern rights in rem that extend beyond the immediate parties and impact third-party interests, including those of subsequent purchasers and persons with interests in the property. These matters, it held, are reserved for adjudication by public fora under the Transfer of Property Act, 1882, and Order XXXIV of the Code of Civil Procedure, 1908.

Relying extensively on *Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd.*, (2011) 5 SCC 532, the Court reiterated that mortgage suits are distinct from mere money recovery actions, as they involve complex issues of foreclosure, redemption, and sale of property affecting multiple stakeholders. The Bench recalled that in *Booz Allen*, the Supreme Court had held that a suit to enforce a mortgage is an action in rem, and that such suits cannot be referred to arbitration as arbitral tribunals lack the authority to adjudicate or bind non-signatories with interests in the mortgaged property. The same position, the Court observed, continues to hold the field despite amendments to Section 8 of the Arbitration Act.

The Court then addressed the Defendants' reliance on *Vidya Drolia*, clarifying that the Supreme Court in that decision had not diluted the principle laid down in *Booz Allen*. Rather, *Vidya Drolia* reaffirmed that actions in rem, such as foreclosure or redemption of mortgage, are inherently non-arbitrable. The judgment's observation that subordinate rights in personam flowing from rights in rem may be arbitrable was, the Court explained, not applicable to mortgage enforcement, as such proceedings necessarily involve multiple interested parties and require centralised adjudication.

The Bench further referred to *Emaar MGF Land Ltd.* and *M. Hemalatha Devi v. B. Udayasri*, (2024) 4 SCC 255, both of which reaffirmed that even after the 2015 amendment to Section 8 of the Arbitration Act, which narrowed judicial interference at the referral stage, certain classes of disputes remain excluded from arbitration. The Court observed that Section 2(3) of the Arbitration Act explicitly preserves the operation of other laws that render specific disputes non-arbitrable. Thus, the 2015 amendment cannot be interpreted to override statutory limitations on arbitrability or to include actions in rem within private adjudication.

The Court then turned to the presence of the cooperative society, which was not a party to any arbitration agreement. It observed that the Plaintiff had sought specific reliefs against the society, including injunctions restraining it from granting permissions and NOCs. Such reliefs, the Court noted, cannot be granted by an arbitral tribunal since the society was not a signatory to

the arbitration agreement. Citing *Vidya Drolia*, the Court reiterated that disputes affecting third-party rights and requiring centralised adjudication are non-arbitrable.

Addressing the argument for partial reference to arbitration, the Court relied on *Sukanya Holdings Pvt. Ltd. v. Jayesh H. Pandya*, (2003) 5 SCC 531, to hold that bifurcation of claims is impermissible when the causes of action are inseparable and involve necessary parties not bound by the arbitration agreement. The Plaintiff's reliefs against both the developers and the society were intertwined, and therefore, the entire dispute had to be adjudicated by the civil court.

Concluding, the Court held that enforcement and redemption of mortgage rights fall squarely within the category of non-arbitrable disputes as recognised by *Booz Allen* and reaffirmed by subsequent precedents. The presence of a non-signatory cooperative society and the indivisible nature of the reliefs sought further precluded reference to arbitration. Accordingly, the Defendants' application under Section 8 of the Arbitration Act was dismissed.

Under Section 2(3) of the Arbitration and Conciliation Act, 1996, arbitration is excluded where another law expressly or by necessary implication reserves jurisdiction for public fora. Disputes that require centralized adjudication, such as insolvency, testamentary matters, or foreclosure of mortgages, are deemed non-arbitrable because they affect third-party rights or involve statutory mechanisms. This preserves the distinction between private consensual adjudication and matters requiring public supervision.

Sepco Electric Power Construction Corporation v. GMR Kamalanga Energy Ltd., 2025 SCC OnLine SC 2088 - Supreme Court clarifies limits of judicial interference under Sections 34 and 37 of the Arbitration Act

The Court upheld the Orissa High Court's decision setting aside an arbitral award that had modified contractual terms and violated principles of natural justice, holding that arbitral tribunals cannot rewrite contracts or discriminate between parties under the guise of interpretation.

The appeal arose from a series of arbitration proceedings between an EPC contractor, SEPCO Electric Power Construction Corporation ("the Contractor"), and the project owner, GMR Kamalanga Energy Limited ("the Employer"), relating to the construction of three 350 MW coal-based thermal power units at Kamalanga, Odisha. The contracts between the parties, comprising the Civil Works and Erection Agreement, Onshore and Offshore Supply Agreements, and a

Coordination Agreement, collectively formed a turnkey EPC framework for the project. Disputes arose following delays, suspension of Unit 4, and disagreements over payment, prolongation costs, and alleged breaches of contract.

Following SEPCO's demobilisation from the site in 2015, arbitration was invoked under the EPC contracts. The arbitral tribunal delivered a detailed award in 2020 directing the Employer to pay approximately INR 995 crore to SEPCO after offsetting counterclaims. The tribunal's findings turned largely on its interpretation that the Employer had waived the contractual requirement for written notices of delay through an exchange of emails in March 2012, thereby creating an estoppel against insisting on notice. It also concluded that SEPCO was entitled to prolongation costs and payments for undelivered equipment related to the suspended Unit 4, while the Employer's counterclaims were substantially dismissed for want of notice.

Aggrieved, the Employer challenged the award before the Orissa High Court under Section 34 of the Arbitration Act alleging procedural unfairness, excess of jurisdiction, and disregard of contractual clauses, particularly the "No Oral Modification" and "No Waiver" provisions. The Single Judge dismissed the challenge, finding no violation of public policy or natural justice, holding that the tribunal had merely interpreted the contract and exercised its mandate.

On appeal, however, a Division Bench of the High Court under Section 37 reversed the decision and set aside the award. It held that the tribunal had exceeded its jurisdiction by introducing a waiver and estoppel not pleaded by SEPCO and by rewriting the contract. Referring to Sections 62 and 63 of the Indian Contract Act, 1872, the Bench reasoned that waiver or alteration of a contract must arise from clear mutual consent or a deliberate abandonment of a known right. The inclusion of express "No Oral Modification" and "No Waiver" clauses barred such an inference. The tribunal's reliance on the 2012 email exchange, which merely rescinded a suspension notice conditional on payment of certain sums, was insufficient to establish waiver or estoppel.

The Division Bench further found that the tribunal had relied on an incorrect moisture specification to determine defects in coal quality, resulting in erroneous findings of liability and computation of damages. It also held that the tribunal's award of INR 200 crore for prolongation costs lacked evidentiary basis, being supported only by hearsay audit evidence, contrary to the contractual requirement of documentary substantiation under Section 16.4 of the contract. Citing *ONGC v. Saw Pipes Ltd.*

(2003) 5 SCC 705 and *Associated Engineering Co. v. Government of A.P.* (1991) 4 SCC 93, the High Court concluded that the tribunal's findings amounted to patent illegality.

The High Court further held that the tribunal had treated the parties unequally in violation of Section 18 of the Arbitration Act. While SEPCO's claims were allowed despite absence of contractual notices, GMR's counterclaims were dismissed on that very ground. This discriminatory approach, the Court held, violated the fundamental policy of Indian law and principles of natural justice.

SEPCO appealed to the Supreme Court, contending that the High Court had exceeded its limited jurisdiction under Section 37, which permits interference only to the extent of verifying whether the Section 34 court had acted within its bounds. It argued that the Division Bench had reappreciated evidence and substituted its interpretation of contract terms contrary to the precedents in *Renusagar Power Co. Ltd. v. GE Co.* (1994 Supp (1) SCC 644), *Associate Builders v. DDA* (2015) 3 SCC 49, *Ssangyong Engineering v. NHAI* (2019) 15 SCC 131, and *Delhi Metro Rail Corp. Ltd. v. DMRC Express Pvt. Ltd.* (2024) 6 SCC 357. SEPCO maintained that equitable estoppel operates as an exception to "No Oral Modification" clauses, citing *Rock Advertising Ltd. v. MWB Business Exchange Centres Ltd.* [2018] UKSC 24 and *Charles Lim Teng Siang v. Hong Choon Hau* [2021] SGCA 43, and that arbitral tribunals are entitled to interpret commercial contracts liberally within their jurisdiction.

The Respondent countered that the High Court had acted within its powers, as the award violated Sections 18 and 28(3) of the Arbitration Act and the fundamental policy of Indian law. It emphasised that the tribunal's actions went beyond mere interpretation, amounting to rewriting the contract and granting unpleaded reliefs, thereby breaching natural justice.

The Supreme Court upheld the High Court's decision, affirming that the scope of judicial review under Sections 34 and 37 is narrow but not nonexistent. It reiterated that courts must intervene where arbitral awards are perverse, discriminatory, or contrary to statutory mandates. The Court reviewed the evolution of these provisions through decisions including *McDermott International Inc. v. Burn Standard Co. Ltd.* (2006) 11 SCC 181, *Parsa Kente Collieries Ltd. v. Rajasthan Rajya Vidyut Nigam Ltd.* (2019) 7 SCC 236, *UHL Power Co. Ltd. v. State of Himachal Pradesh* (2022) 4 SCC 116, and *Project Director, NHAI v. M. Hakeem* (2021) 9 SCC 1. It held that Section 37 is even narrower than Section 34, permitting interference only to ensure that the lower court did not transgress its

limited powers. However, when an arbitral award offends fundamental principles of justice, the appellate court is justified in setting it aside.

Applying this standard, the Bench found that the tribunal had clearly violated Sections 18 and 28(3) by treating the parties unequally and disregarding express contractual terms. The award's assumption of waiver, never pleaded or proved, was a unilateral modification of the contract. The tribunal's findings on performance tests also contradicted the record, as the failure of the Unit Characteristics Test rendered the subsequent Performance Guarantee Test invalid. The Court held that such conduct amounted to rewriting the contract, an act beyond arbitral authority.

The Court emphasised that while party autonomy and minimal interference remain cornerstones of arbitration, they cannot shield awards that fundamentally disregard fairness or contractual sanctity. It noted that judicial restraint cannot extend to tolerating decisions that undermine the rule of law. The arbitral award, it concluded, was "so unreasonable and discriminatory that it violated the most basic notions of justice, and dismissed SEPCO's appeal.

Sections 34 and 37 of the Arbitration and Conciliation Act, 1996 define the narrow framework for judicial intervention in arbitral awards. Courts may set aside an award only on limited grounds, such as procedural unfairness, patent illegality, or conflict with India's fundamental public policy, but cannot reappreciate evidence or reinterpret contractual terms. The appellate review under Section 37 is even more restricted, ensuring that arbitral finality and party autonomy remain the cornerstones of India's arbitration regime.

KCA Infrastructure & Anr. v. HDB Financial Services Ltd., CM APPL No.51218/2022 - Delhi High Court clarifies distinction between 'seat' and 'venue' of arbitration for determining jurisdiction under Section 34 of the Arbitration and Conciliation Act, 1996

The Court held that where an arbitration clause merely specifies a "venue" without designating it as the "seat," the court where the first application under Part I of the Act is filed, if otherwise competent, retains exclusive jurisdiction under Section 42.

The case arose out of a financing transaction between KCA Infrastructure ("the Borrower") and HDB Financial Services Ltd. ("the Lender") for the purchase of construction equipment. The Borrower obtained a loan of INR 54.9 lakh secured against a construction machine and issued six undated security cheques. Following default in repayment, the Lender recalled the loan

and initiated arbitral proceedings under an agreement dated November 30, 2016, which contained an arbitration clause specifying that disputes "shall be referred to arbitration of a sole arbitrator to be appointed by HDBFS. The venue for conducting the arbitration proceedings shall be Chennai, India."

A sole arbitrator seated in Chennai rendered an award on October 30, 2019, directing the Borrower to pay INR 30,92,780 with 18% interest and to hand over the hypothecated vehicle. The Borrower challenged the award under Section 34 before the District Judge, Patiala House, New Delhi, where the Lender's lending office was located. The District Judge, however, dismissed the petition on August 29, 2022, holding that it lacked territorial jurisdiction since the arbitration proceedings were conducted at Chennai, which therefore constituted the "seat" of arbitration.

On appeal under Section 37 of the Arbitration Act, the Borrower contended that the District Judge had erred in treating Chennai as the juridical seat. It argued that the arbitration clause designated only the "venue," not the "seat," and that the first application under Part I of the Act, a Section 9 petition filed by the Lender for appointment of a receiver, had been made before the District Court in Delhi, which thereby acquired exclusive jurisdiction under Section 42 of the Arbitration Act. The Borrower relied on *State of West Bengal v. Associated Contractors*, (2014) 1 SCC 32, and *BGS SGS SOMA JV v. NHPC Ltd.*, (2020) 4 SCC 234, to contend that Section 42 vests supervisory jurisdiction in the court where the first valid application under Part I is filed, so as to prevent conflicting rulings.

The Borrower also alleged that the arbitral proceedings were vitiated by procedural irregularities, including lack of notice, denial of opportunity to file a reply, and the arbitrator's bias owing to repeated appointments by the Lender. The Borrower submitted that the Lender had itself invoked the jurisdiction of Delhi courts under Section 9, acknowledging the location of its lending office in Delhi, and was therefore estopped from later challenging that jurisdiction.

The Lender, on the other hand, argued that the loan agreement expressly fixed Chennai as the venue of arbitration, which operated as an exclusive jurisdiction clause. Relying on *Indus Mobile Distribution Pvt. Ltd. v. Datawind Innovations Pvt. Ltd.*, (2017) 7 SCC 678, and *Hindustan Construction Co. Ltd. v. NHPC Ltd.*, (2020) 4 SCC 310, it asserted that the designation of a seat confers exclusive supervisory jurisdiction on the courts of that place, to the exclusion of all others, even if part of the cause of action arises elsewhere. The Lender contended that since the arbitral proceedings were held in Chennai and the award was signed there, only the

courts in Chennai could entertain a challenge under Section 34.

The Division Bench of the Delhi High Court (V. Kameswar Rao and Vinod Kumar, JJ.) examined the issue in detail and framed the central question, whether the District Judge was justified in returning the Section 34 petition for lack of jurisdiction under Order VII Rule 10 of the CPC.

The Court began by reiterating the principle laid down in *BGS SGS SOMA JV* that Section 42 of the Arbitration Act is intended to centralize supervisory jurisdiction in one court and avoid conflicts. Where the arbitration agreement designates a "seat," the courts of that place alone have jurisdiction over all proceedings under Part I. However, where no seat is specified and only a "venue" is mentioned, jurisdiction depends on where the first application under Part I is made or where part of the cause of action arises.

Citing *Arif Azim Co. Ltd. v. Micromax Informatics FZE*, Arbitration Petition No. 31 of 2024, the Court recalled the "three-condition test" formulated in *BGS SGS SOMA JV* to determine when a "venue" can be construed as the "seat" of arbitration:

1. The arbitration clause must designate only one place;
2. The arbitral proceedings must be anchored to that place without any scope for change; and
3. There must be no contrary indicia suggesting that the place is merely a convenient venue.

Applying these principles, the Court observed that while Clause 31 of the agreement referred to Chennai as the "venue," it did not state that the arbitration would be "seated" in Chennai or that Chennai courts would have exclusive jurisdiction. In contrast, the parties' substantive connections, execution of the agreement, operation of the lending office, and the Section 9 petition, were all rooted in Delhi. The Lender itself had invoked the jurisdiction of the Delhi District Court under Section 9 to secure possession of the vehicle, explicitly asserting in its pleadings that its registered lending office at Panchkuian Road, New Delhi, conferred territorial jurisdiction on that court. Having availed that forum, the Lender could not later claim that only Chennai courts had jurisdiction.

The Court noted that the agreement bore the Lender's stamp showing "HDB Financial Limited, New Delhi," confirming that the contract was executed in Delhi. The only nexus to Chennai was that the arbitral hearings were held there. This, the Bench held, was insufficient to transform Chennai from a mere "venue" into a

"seat," as it failed the third condition of the *BGS SGS SOMA* test, there were clear contrary indicia showing that the arbitral proceedings were otherwise connected to Delhi.

The Division Bench held that by filing its first application under Section 9 before the Delhi District Court, the Lender had triggered Section 42, which provides that once a court is approached under Part I of the Arbitration Act, that court alone retains jurisdiction over all subsequent applications arising from the same arbitration agreement, including a Section 34 petition to set aside the award.

In reaching its conclusion, the Court distinguished *Hindustan Construction Co. Ltd.* and *Indus Mobile*, noting that in those cases the "seat" of arbitration was expressly designated in the contract, thereby conferring exclusive jurisdiction. In the present case, however, Chennai was only described as the "venue," and nothing in the agreement suggested that the parties intended to exclude the jurisdiction of other competent courts.

The Court held that the District Judge erred in equating "venue" with "seat" and misapplied the law by assuming Chennai had exclusive jurisdiction. The order returning the Section 34 petition was therefore set aside. The appeal was allowed, and the Section 34 petition was restored for adjudication on merits before the District Judge, Patiala House, New Delhi.

In its concluding observations, the Bench emphasised that precision in drafting arbitration clauses is vital to avoid jurisdictional confusion. It reiterated that while the "seat" of arbitration determines the court of supervisory jurisdiction, a mere reference to "venue" does not oust other courts unless the parties clearly intend it to function as the juridical seat. The decision reinforces that Section 42 ensures consistency by vesting control in the court first approached under Part I, particularly where the contract or record does not unambiguously designate a seat.

Section 42 of the Arbitration and Conciliation Act, 1996 ensures that once a court is approached under Part I of the Act, such as through an application under Section 9, that court alone retains exclusive jurisdiction over all subsequent applications arising from the same arbitration agreement, including those under Section 34. This provision prevents conflicting rulings and consolidates supervisory control of arbitral proceedings within a single forum, thereby upholding judicial consistency and procedural certainty.

Maher Dadha v. Mohanchand Dadha & Ors., 2025:MHC:2424 - Madras High Court sets

aside family arbitration award for violation of natural justice

The Court held that even when arbitral awards are made by family elders acting as lay arbitrators, the principles of natural justice under Section 34(2)(a)(iii) of the Arbitration and Conciliation Act, 1996 remain non-negotiable.

The dispute arose within the Dadha family over the management and financial affairs of several jointly owned companies, including Dadha Estates Pvt. Ltd., Dadha Securi Lockers Pvt. Ltd., Dadha Brothers Ltd., Alle Chemicals Pvt. Ltd., and the HUF L. Milapchand Dadha & Sons. The two brothers, Maher Dadha and Mahendra Dadha, had jointly managed the family's business entities until disagreements over accounting discrepancies, borrowings, and control of assets led to prolonged discord. To resolve the matter amicably, the parties executed an arbitration agreement on 10 May 2005, referring all disputes concerning the five entities to three family elders, their uncles, who were appointed as arbitrators. The agreement provided that the arbitrators' decision would be final and binding.

The family elders proceeded informally, collecting the parties' statements, documents, and balance sheets. On 9-10 October 2005, the tribunal issued a handwritten award directing equalization of investments between the two family groups and prescribing a schedule for payments and corporate restructuring. The award directed Maher Dadha to pay INR 5.34 crore in five equal instalments towards clearing debts, equalizing deposits, and settling liabilities under the HUF accounts, and further required withdrawal of all litigations between the two groups. It also stipulated arrangements for sale or allocation of residential flats owned by the family's real-estate company, imposed interim rent obligations, and provided for equal representation of both groups in the companies' management after completion of the payment schedule.

Maher Dadha challenged the award under Section 34 of the Arbitration Act, alleging that he had not been given adequate opportunity to present his case and that the arbitrators had relied on unaudited statements and unverified accounts. He argued that the award was a non-speaking decision lacking reasons and that its conclusions were based on presumptions rather than evidence. His nephew, Apoorva Dadha, filed a similar petition, though he did not contest the matter independently. The opposing group, represented by Mahendra Dadha and his family, contended that the arbitrators were family elders acting in good faith, that both sides had participated in the process, and that the informal procedure was

appropriate given the nature of the familial dispute.

The Court began by acknowledging the unique nature of the arbitration, conducted by lay family elders rather than legally trained professionals. It observed that while courts ordinarily exercise restraint when reviewing such informal awards, they must nonetheless ensure that the fundamental principles of fairness and due process are respected. Referring to its own earlier ruling in *SIPCOT v. RPP Infra Projects Ltd.* (O.P. No. 494 of 2018, decided 6 October 2025), the Court reiterated that awards made by non-lawyers must be evaluated for substantive fairness rather than technical precision. The question is whether the arbitrator's conclusions represent a "possible view" based on the material before them, not whether the reasoning conforms to judicial standards. However, the Court emphasised that even in informal or family arbitrations, adherence to natural justice is mandatory, an arbitrator cannot decide without giving both sides a fair hearing.

Reviewing the record, the Court noted that the arbitration had been conducted through correspondence and informal meetings. Both parties exchanged letters and documents between May and September 2005. Crucially, on 29 September 2005, the arbitrators sent Maher Dadha trial balance statements of three companies and summoned him to attend a meeting on 3 October 2005, continuing through 4-5 October for clarifications. Maher replied on 1 October 2005, stating that he could not attend on those dates due to prior commitments and requested that the hearing be rescheduled after 5 October. The arbitrators, however, did not respond or adjourn the meeting and proceeded to finalise the award on 9-10 October 2005. The Court found that this denial of a final hearing, despite an express request for rescheduling, amounted to a clear violation of Section 18 (equal treatment of parties) and Section 34(2)(a)(iii) (inability to present one's case) of the Arbitration Act.

Justice N. Anand Venkatesh emphasised that the essence of natural justice is non-derogable, irrespective of whether arbitrators are professionals or family elders. While acknowledging that laypersons cannot be expected to draft legally reasoned awards, the Court held that failure to provide an opportunity to respond to critical documents or submissions invalidates the entire proceeding. The Bench drew support from *Associate Builders v. DDA* (2015) 3 SCC 49 and *Konkan Railway Corporation Ltd. v. Chenab Bridge Project Undertaking* (2023) 9 SCC 85, noting that judicial interference under Section 34 is limited but necessary when the award is perverse, violates due process, or ignores vital evidence.

The Court also cited the Delhi High Court's ruling in *NHAI v. Unitech NCC (JV)* (OMP (Comm) No. 23 of 2017, 30 May 2025) to summarise the tests for interference under Section 34: courts may set aside an award if it is patently illegal, passed in violation of natural justice, or contrary to public policy. The judgment reiterated that even when the arbitrator is a family elder, the award must not suffer from "absolute perversity" or "manifest illegality." The failure to grant Maher Dadha's request for a short adjournment, despite its relevance to his ability to respond to financial documents, was deemed a material procedural defect.

Applying these principles, the Court held that the award was unenforceable as it was made in breach of the audi alteram partem rule. The tribunal's omission to respond to Maher's letter and its decision to conclude the proceedings prematurely deprived him of an opportunity to present his case at a decisive stage. This, the Court ruled, rendered the award contrary to public policy under Section 34(2)(b)(ii). It observed that "whatever may be the composition of the arbitral tribunal, whether a legally trained mind, lay person, or family elder, following the principles of natural justice is non-negotiable."

The Court further clarified that although family arbitrations are guided by equity and moral understanding rather than strict legal procedure, they must still conform to minimum procedural fairness. A family award may lack formal pleadings or evidence recording, but both parties must at least have the chance to respond to materials and participate in the process.

Accordingly, the Madras High Court set aside the arbitral award dated 9-10 October 2005 on grounds of violation of natural justice and conflict with public policy. The petition filed by Maher Dadha (O.P. No. 80 of 2006) was allowed, while the connected petition (O.P. No. 862 of 2007) was closed as consequential. The Court permitted the parties, if they so desired, to reconvene before the same panel of family arbitrators to resolve the dispute afresh, noting that the elders "can give an opportunity to both parties and take a decision keeping in mind the overall interest of the family."

Section 18 of the Arbitration and Conciliation Act, 1996 mandates equal treatment of parties and guarantees each party a full opportunity to present its case. This principle, rooted in *audi alteram partem,* forms part of the fundamental policy of Indian law. Any arbitral award passed in violation of natural justice or without affording adequate opportunity for representation is liable to be set aside under Section 34(2)(a)(iii), ensuring procedural fairness remains the cornerstone of the arbitral process.

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