

DISPUTE RESOLUTION DIGEST

FEBRUARY & MARCH 2026

LATEST CASE LAW

Hala Kamel Zabal v. Arya Trading Ltd. (2026 SCC OnLine Del 455)

Appointment of Arbitrator by High Court in International Commercial Arbitration does not invalidate arbitral award where parties failed to raise timely objection.

EDITOR'S COLUMN

Eminent Colonizers v. Rajasthan Housing Board (2026 SCC OnLine SC 148)

The court reaffirmed that Section 11 determinations operate as res judicata; the Supreme Court has curtailed the possibility of belated jurisdictional challenges aimed at unsettling arbitral awards. The decision ensures procedural discipline and protects the integrity of arbitration as an efficacious dispute resolution mechanism.

BITES

C. Velusamy v. K Indhera (2026 SCC OnLine SC 142)

The judgment strikes a careful balance between enforcing discipline in arbitral timelines and safeguarding substantive justice, thereby reinforcing Section 29A as a provision designed to secure the logical and meaningful conclusion of arbitral proceedings rather than their premature termination.

Arenel (P) Ltd. v. Aakash Packaging (2026 SCC OnLine Bom 1847)

The Bombay High Court upheld the setting aside of an arbitral award on grounds of patent illegality and violation of fundamental principles of justice, holding that reliance on hearsay evidence and disregard of key material evidence renders an award vulnerable under Section 34. However, applying the doctrine of severability, the Court restored a distinct and undisputed portion of the award relating to refund for non-supply of goods.

LATEST CASE LAW

Hala Kamel Zabal v. Arya Trading Ltd. (2026 SCC OnLine Del 455)

BACKGROUND

- In the present case, a disputes arose out of a Shareholders' Agreement ("SHA") dated 23.11.2006 between Hala Kamel Zabal and the three Respondents, under which the Appellant and Respondent no.1 and Respondent no.2 held 33.33% shareholding in Respondent no. 3's company.
- The SHA incorporated an arbitration clause wherein it was agreed to that the disputes would be resolved by a sole arbitrator to be appointed by the Chief Justice of the Delhi High Court and the arbitration shall be held in New Delhi. Disputes arose with regard to the working of SHA and therefore, the arbitration clause was invoked. Proceedings u/s 9 of the Arbitration and Conciliation Act, 1996 ("A&C Act") were initiated and application u/s 11 of the Act was filed for appointment of arbitrator.
- The Delhi High Court appointed a sole arbitrator, who eventually passed the impugned arbitral award on 14.02.2012. Several years later, the appellant challenged the award under Section 34 of the A&C Act. It is case of the Appellant that since one party was a Hong Kong company and the appellant was a Canadian citizen, the dispute qualified as an international commercial arbitration, and therefore the arbitrator should have been appointed by the Supreme Court under Section 11(12), not by the Delhi High Court. Learned Single judge vide impugned order rejected the challenge to appointment of arbitrator and therefore, the Appellant filed the present appeal.

ISSUES

- Whether the appointment of a sole arbitrator by the Delhi High Court in an ICA, instead of the Supreme Court as contemplated under Section 11 of the A&C Act, renders the arbitral proceedings invalid.
- Whether such an alleged defect in the forum of appointment of the arbitrator can be a ground to set aside the arbitral award under Section 34(2)(a)(v) of the Arbitration and Conciliation Act.
- Whether procedural irregularities in the appointment of an arbitrator, when not objected to at the appropriate stage, can invalidate a concluded arbitral award.

DECISION

- The Court dismissed the appeal and upheld the order of the Single Judge, holding that the appointment of an arbitrator by the Delhi High Court in an ICA does not invalidate the arbitral proceedings and the resulting award when the appointment is made in accordance with the arbitration agreement between the parties. It was further held that objections regarding the forum of appointment of the arbitrator are procedural in nature and capable of waiver under Section 4 of the A&C Act. Since the appellant had participated in the arbitral proceedings without raising any objection to the appointment at the relevant stage, the right to challenge the appointment was deemed to have been waived u/s 4 of the A&C Act.
- It was observed that the statutory provisions for appointment of arbitrator are different from the provisions governing the challenge to the arbitral award. Therefore, appointment of arbitrator is not linked to the grounds for setting aside an award u/s 34 of the A&C Act.
- The court opined that Section 34(2)(a)(v) does not contemplate the setting aside of an arbitral award solely on the ground that the arbitrator was appointed by an authority allegedly lacking competence. It was also held that Section 11(6) contemplates appointment not only by the Supreme Court or the High Court, as the case may be, but also by any person or institution designated by such court.
- Accordingly, the Court ruled that such procedural irregularities in the appointment process not at the appropriate stage cannot be used as a ground to set aside an arbitral award under Section 34 unless the arbitration agreement itself violates a non-derogable provision of the Act.

EDITOR'S COLUMN

Eminent Colonizers (P) Ltd. v. Rajasthan Housing Board (2026 SCC OnLine SC 148)

EDITOR'S COMMENTS

- For arbitration practitioners and contracting parties, the ruling highlighted necessity of the promptly challenging Section 11 orders, failing which such determinations attain binding finality.
- The judgment stands as a significant contribution to Indian arbitration jurisprudence, reinforcing certainty, consistency, and judicial coherence within the arbitral framework.



BACKGROUND

- The dispute arose from construction contracts between M/s Eminent Colonizers Private Limited (Appellant) and the Rajasthan Housing Board (Respondent). The Appellant was awarded the construction work by the Respondent. A contract was entered into between the parties for a total value of Rs 5,27,00,070 on a lump sum basis.
- The contract contained Clause 23, which provided that disputes would be resolved through an Empowered Standing Committee. Disputes relating to escalation charges and penalty deductions arose and the Appellant invoked this mechanism. The appellant alleged that the Standing Committee was not constituted in accordance with the contract and that its claims remained unpaid. The appellant approached the Rajasthan High Court under Section 11 of the A&C Act for the appointment of an arbitrator. In 2014, before the Arbitration and Conciliation (Amendment) Act, 2015 came into force, the High Court appointed a sole arbitrator and the Respondent did not challenge this order. The arbitral proceedings resulted in awards in favour of the Appellant.
- However, the Respondent later filed applications under Section 34 challenging the awards, arguing that Clause 23 did not amount to an arbitration clause. The Commercial Court accepted this argument and set aside the awards. The said decision of the commercial court was upheld by the High Court, leading to the appeal before the Supreme Court.

ISSUE

Whether, in arbitral proceedings initiated before the 2015 Amendment, the question regarding the existence and validity of an arbitration agreement, once decided at the Section 11 stage, can be reconsidered or challenged later in proceedings under Section 34 of the A&C Act.

DECISION

- The Court held that the dispute was governed by the pre-2015 legal framework and therefore, the principles laid down in ***SBP & Co. v. Patel Engineering Ltd.* [(2005) 8 SCC 618]** applied, under which the power exercised under Section 11 of the A&C Act is judicial in nature. Accordingly, while appointing an arbitrator the court determines the existence of a valid arbitration agreement, and such determination attains finality under Section 11(7).
- The Court observed that the Section 11 order did not contain detailed reasoning. The appointment of an arbitrator itself implied satisfaction regarding the existence of a valid arbitration agreement, and since the Respondent did not challenge the order it became final. Relying on decisions such as ***State of West Bengal v. Sarkar & Sarkar* [(2018) 12 SCC 736]** and ***Canara Bank v. N.G. Subbaraya Setty* [(2018) 16 SCC 228]**, the Court held that the issue could not be reopened in later proceedings and operated as res judicata between the parties, even though the present dispute arose prior to the 2015 Amendment which later limited the scope of inquiry under Section 11.
- Allowing the appeals, the Supreme Court held that the Commercial Court and the High Court erred in reconsidering the validity of Clause 23 as an arbitration clause, as this issue had already been decided at the Section 11 stage and operated as res judicata between the parties. Accordingly, setting aside the arbitral awards on that ground was unsustainable. The Court remitted the matters to the Commercial Court to examine other objections under Section 34, excluding the issue of the existence and validity of the arbitration agreement, and directed expeditious disposal considering the age of the awards.

C. Velusamy v. K Indhera (2026 SCC OnLine SC 142)

CASE SUMMARY

- In *C. Velusamy v. K. Indhera*, the Supreme Court authoritatively interpreted Section 29A of the Arbitration and Conciliation Act, 1996 to hold that courts retain the power to extend an arbitrator’s mandate even after the expiry of the prescribed period and even after an arbitral award has been delivered.
- The case arose from an award rendered beyond the extended mandate, which was challenged as a nullity. While a parallel application sought retrospective extension of time. Departing from a strict and technical approach, the Court held that such an award is not void ab initio but merely unenforceable unless the mandate is duly extended by the court. Emphasising the legislative intent to prevent wastage of time, costs, and evidence, the Court clarified that Section 29A is a facilitative provision aimed at ensuring completion of arbitral proceedings rather than terminating them on procedural lapses.
- It further affirmed that the court’s supervisory jurisdiction survives both the expiry of mandate and the passing of the award, and may be exercised with appropriate conditions such as costs or substitution of the arbitrator. The judgment thus reinforces a pragmatic, pro-arbitration approach by safeguarding the continuity and finality of arbitral proceedings while maintaining procedural discipline.

ISSUE

Arenel (P) Ltd. v. Aakash Packaging (2026 SCC OnLine Bom 1847)

DECISION

- In *Arenel (Pvt.) Ltd. v. Aakash Packaging*, the Bombay High Court, while exercising jurisdiction under Section 37 of the Arbitration and Conciliation Act, affirmed that arbitral awards can be interfered with where they suffer from patent illegality or violate the fundamental principles of justice.
- The dispute concerned defective packaging materials supplied to a Zimbabwe-based company, where the arbitral tribunal had awarded substantial sums to the claimant by relying heavily on expert and oral evidence while discarding contemporaneous SGS India laboratory reports. Upholding the Section 34 court’s findings, the High Court held that the arbitrator’s approach was perverse, as it ignored material evidence, relied on hearsay testimony, and improperly shifted the burden of proof, thereby rendering findings that “shock the conscience of the Court” and fall within the ambit of public policy under Section 34(2)(b)(ii), as interpreted in *Ssangyong Engineering & Construction Co. Ltd. v. NHAI*.
- At the same time, the Court clarified that such intervention does not amount to re-appreciation of evidence but is warranted where the arbitral process itself is fundamentally flawed. Importantly, applying the doctrine of severability as recognised in *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.*, the Court partially restored the award to the extent of USD 43,500.25, being an admitted and independent claim for non-supply of goods under a separate invoice.
- The judgment thus strikes a careful balance by reinforcing minimal judicial interference in arbitral awards while recognising that courts retain the power to set aside or sever awards where findings are legally unsustainable, ensuring that arbitral autonomy does not override basic standards of fairness and evidentiary integrity.

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