



LATEST CASE LAWS

- Meewel Constructions (P) Ltd. v. GE Power Systems India (P) Ltd., (2025 SCC OnLine Del 7138)
- IRB Westcoast Tollway Ltd. and Ors. v. National Highways Authority of India (MANU/DE/7792/2025)

EDITOR'S COLUMN

- Capri Global Capital Limited v. M/s Divya Enterprise (Partnership Firm) and Others (2025 SCC OnLine Bom 3783) : The Bombay High Court has ruled that disputes concerning the enforcement or redemption of a mortgage cannot be referred to arbitration since such matters involve rights in rem that are justiciable only by public fora.

BITES

- Rajuram Sawaji Purohit v. The Shandar Interior Pvt. Ltd. (2025 SCC OnLine Bom 3906) – Bombay High Court
- Novenco Building & Industry A/S v. Xero Energy Engineering Solutions Pvt. Ltd. (2025 INSC 1256) - SC

ARBITRATION & COMMERCIAL CASES UPDATES

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An E - Newsletter

Delhi High Court: Mecwel Constructions Pvt. Ltd. v. GE Power Systems India Pvt. Ltd (SCC OnLine Del 7138) : The Delhi High Court in this case holds that the Arbitrator’s termination order under Section 25(a) of the Arbitration and Conciliation Act, 1996 was not an award. The High Court allowed Mecwel’s petitions and directed that the arbitration proceedings would continue before the same arbitrator appointed earlier by the Court’s order.

Background: The dispute arose from subcontracts awarded by GE Power Systems India Pvt. Ltd. to Mecwel Constructions Pvt. Ltd. for mechanical erection and commissioning works at thermal power projects. Following project delays, GE terminated Mecwel’s contracts, leading Mecwel to approach the Delhi High Court under Section 9 to restrain encashment of bank guarantees. While permitting invocation, the Court directed the proceeds to be held in FDRs and appointed a sole arbitrator. However, Mecwel failed to file its Statement of Claim or pay its share of fees, prompting the arbitrator to terminate proceedings under Section 25(a). Mecwel contended that this termination amounted to an “award” challengeable under Section 34, while GE argued it was merely a procedural closure without adjudication on merits.

Decision: The Delhi High Court held that an order terminating arbitral proceedings under Section 25(a) for non-filing of the Statement of Claim does not and cannot be considered as an “award” under sub-section 2 of Section 32. Relying on *PCL Suncon v. National Highways Authority of India (2021) SCC OnLine Del 313* and Supreme Court rulings, the Court clarified that such orders are merely procedural and do not adjudicate or determine the substantive rights or liabilities of the parties. The award can only be considered to be an award once it adjudicates the rights of the parties. The Court opined that an order to qualify as an Award must decide either finally or an interim, an issuing forming part of the dispute referred to Arbitration. It observed that termination under Section 25(a) only ends the arbitrator’s mandate, leaving the Claimant free to seek revival under Section 14(2). Emphasising the pro-arbitration approach, the Court allowed the petition and directed that arbitral proceedings should be allowed to continue before the Arbitrator appointed by this Court and recorded Mecwel’s assurance to comply with filing and fee obligations to facilitate the same.

Delhi High Court: IRB Westcoast Tollway Ltd. and Ors. Vs. National Highways Authority of India (MANU/DE/7792/2025) : The Delhi High Court held that once the Arbitral Tribunal has recused it cannot be reconstituted.

Background: A concession agreement dated 25.03.2013 was entered into between the Petitioner no. 1 and the Respondent regarding four laning of Goa/Karnataka Border-Kundapur Section of NH-66 (formerly NH-17) under NHDP Phase IV on Design, Build, Finance, Operate Transfer (DBFOT) toll basis. Subsequently, disputes arose between the parties and an Arbitral Tribunal was constituted to adjudicate the said disputes. The Arbitral Tribunal recommended that its fee be settled and discussed with the parties during the proceedings due to the extensive length of the record and the assessment of claims totalling Rs. 3515 crores. The recommended fees were not in consonance with Schedule IV of the Arbitration and Conciliation Act, 1996. The Respondent/NHAI, however, objected and demanded that the fee be set strictly in line with the aforementioned Schedule. Consequently, the members of the Tribunal recused themselves. Thereafter, NHAI appointed a new Arbitrator to which the Petitioner objected and filed a writ petition seeking for reinstatement of the previous Tribunal.

Decision: The Delhi High Court held that its scope of jurisdiction is extremely limited in matters arising out of arbitration proceedings. While arriving at this conclusion, the Court relied upon and discussed multiple precedents underscoring the principle of minimal judicial interference in arbitral processes. Emphasising that the supervisory role of constitutional courts cannot be invoked to circumvent the statutory framework of the Arbitration and Conciliation Act, 1996, the Court dismissed the writ petition. It categorically observed that it is beyond the province of this Court to “issue a writ permitting the petitioners to re-approach the previous Arbitral Tribunal.” The Court further noted that if the arbitral tribunal is to be reconstituted, the same must be done strictly in accordance with the provisions of the 1996 Act, and the parties are at liberty to pursue appropriate remedies under the statutory scheme.



EDITOR'S COMMENTS

- The Bombay High Court reaffirmed that disputes concerning enforcement or redemption of a mortgage being rights in rem fall outside the scope of arbitration under Arbitration and Conciliation Act, 1996 and must be adjudicated in a civil court.
- The bench clarified that while Sections 8 and 11 compel parties to honour arbitration clauses, the referral court must still evaluate arbitrability (under Section 8) and cannot simply off-load jurisdiction to an arbitral tribunal when rights in rem or third-party interests are involved.

Hon'ble Bombay High Court in Capri Global Capital Limited Versus M/s Divya Enterprise (Partnership Firm) and Others (2025 SCC OnLine Bom 3783): The Bombay High Court reaffirmed that disputes pertaining to enforcement and redemption of a mortgage, being rights in rem and devoid of an arbitration clause, fall outside the scope of arbitration. Consequently, the Court dismissed the defendants' plea seeking reference of the matter to arbitration.

Background

A financial institution initiated a civil suit in Mumbai seeking recovery of over ₹17 crores and enforcement of its mortgage rights over unsold flats in a redevelopment project. The loans had been advanced to a partnership firm acting as the project developer under a development agreement with a housing society, and were secured through multiple loan agreements and indentures of mortgage. Following default in repayment, the lender issued recall notices and approached the court for recovery and injunctive reliefs restraining any transfer or encumbrance of the project flats. In response, the defendants invoked Section 8 of the Arbitration and Conciliation Act, 1996 asserting that the underlying agreements contained arbitration clauses mandating reference of disputes to arbitration. The financial institution opposed the plea, contending that enforcement of mortgage rights being a matter in rem fell outside the scope of arbitrable disputes. The case thus raised critical questions on the arbitrability of mortgage-related disputes, the scope of judicial scrutiny under Sections 8 and 11 of the Arbitration Act

Decision of the Court

In this case, the Bombay High Court was called upon to determine whether mortgage disputes arising from the enforcement of a mortgage could be referred to arbitration under Section 8 of the Arbitration and Conciliation Act, 1996. The Apex Court considered the ratio of the judgment in *Ayyaswmy v. A. Paramasivan and others* it was held that enforcement of mortgage has a right in rem for which proceedings in arbitration would not be maintainable, the same is not arbitrary since the Plaintiff is seeking enforcement of mortgage, the dispute involved in the suit cannot be referred to arbitration. Further, the Court held that the dispute concerning redemption of mortgage was non-arbitrable due to the absence of an arbitration clause and involvement of third-party rights. Consequently, the application filed by Defendants No.1 to 4 seeking reference to arbitration was rejected.

Our View

In our view the aforesaid decision of the Bombay High Court underscores a vital boundary in arbitration jurisprudence: when a dispute fundamentally involves a right in rem, here a mortgage enforcement claim, the remedy falls within the domain of the courts and not a private arbitral forum. While arbitration remains a powerful tool to uphold contractual autonomy, this ruling reaffirms that it cannot be used to circumvent the statutory and public-law aspects inherent in enforcement or redemption of mortgage security. This clarification is especially pertinent for lenders, developers and legal advisers alike, who must now more carefully assess the nature of a dispute at the outset: if the relief sought is grounded in a transfer or extinguishment of a proprietary right, the contract's arbitration clause may not provide a workable path.

Rajuram Sawaji Purohit v. The Shandar Interior Pvt. Ltd. (2025 SCC OnLine Bom 3906) – Bombay High Court

The High Court of Bombay in *Rajuram Sawaji Purohit v. The Shandar Interior Pvt. Ltd.* held that the pendency of a Section 37 appeal is no bar to initiating a second round of Arbitration. The dispute arose from an agreement for purchase of salvage material, under which the applicant sought refund of a ₹51.38 lakh security deposit. The dispute was referred to the Arbitral Tribunal and the Tribunal passed an award dismissing the claim as time-barred. The Applicant i.e. Rajuram Sawaji Purohit challenged the said Arbitral Award and the was set aside under Section 34 by the High Court of Bombay. The Applicant moved a fresh petition under Section 11 seeking for appointment of an Arbitrator to adjudicate the same disputes that have arisen between the parties under the Arbitration Agreement (second round). Justice Gautam A. Ankhad ruled that the court's role under Section 11 is limited to examining the existence of an arbitration agreement, and issues like limitation or res judicata fall within the Arbitrator's domain. The Court appointed a sole arbitrator to adjudicate the disputes afresh.

Novenco Building & Industry A/S v. Xero Energy Engineering Solutions Pvt. Ltd. (2025 INSC 1256) – Supreme Court

In *Novenco Building & Industry A/S v. Xero Energy Engineering Solutions Pvt. Ltd.* (2025 INSC 1256), the Supreme Court examined whether a suit alleging patent and design infringement could bypass pre-institution mediation under Section 12A of the Commercial Courts Act by claiming urgency. The Danish company, Novenco, had accused its former Indian distributor of manufacturing and selling identical industrial fans under a deceptively similar name. Both the Single Judge and Division Bench of the Himachal Pradesh High Court had rejected the plaint for non-compliance with Section 12A, holding that no genuine urgency was shown. The Supreme Court, however, set aside these orders, holding that in cases of *continuing intellectual property infringement*, the urgency is inherent as each act of sale or manufacture constitutes a recurring wrong causing ongoing harm to business reputation and public interest. The Court emphasized that delay alone cannot defeat urgency when infringement persists and that Section 12A was not intended to make a rights-holder remediless through procedural formalities. The suit was accordingly restored to the High Court for adjudication on merits.



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