



DISPUTE RESOLUTION DIGEST

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LATEST CASE LAW

MCM Worldwide Private Limited Vs. Construction Industry Development Council MANU/SC/0416/2026

If an arbitrator rejects a plea under Section 16, there is no option for the aggrieved party except to wait till the conclusion of the arbitral proceedings and raise it under Section 34 against the final award,” and therefore such an application under Section 34 was “not even maintainable.

The court held that an order rejecting a plea under Section 16(2) is not amenable to challenge at an intermediate stage, and “as the said application was not even maintainable, the question of an appeal under Section 37 did not arise.”

EDITOR'S COLUMN

Home Care Retail Marts (P) Ltd. v. Haresh N. Sanghavi, 2026 SCC OnLine SC 670

The court reaffirmed that any party to an arbitration agreement, including an unsuccessful party in arbitration, may invoke Section 9 of the Act at the post-award stage, and that “the meaning of the expression ‘a party’ cannot be contextually modulated or varied depending upon the outcome of the arbitral proceedings.

The Court further held that “Section 9 of the Act expressly permits any party to an arbitration agreement to approach the Court for interim measures at any time after the award has been rendered but before it is enforced,” and “the provision does not distinguish between a successful or unsuccessful party.”

BITES

Rajiv Gaddh v. Subodh Parkash, 2026 INSC 302 (Supreme Court of India)

The Court states that a party cannot seek fresh appointment of an arbitrator after abandoning earlier arbitral proceedings on the same cause of action without liberty, applying Order 23 Rule 1 CPC, such proceedings are barred as an abuse of process, and a subsequent judgment does not give rise to a fresh cause of action.

The Court observed that “abandonment of the proceedings cannot be readily inferred” and must be based on conduct clearly showing that the claimant has given up the claim. It was further held that the subsequent application under Section 11, being based on the same cause of action, “was not maintainable.”

MCM Worldwide Private Limited Vs. Construction Industry Development Council MANU/SC/o416/2026

BACKGROUND

- Disputes arose between the parties out of the MoUs dated 02.03.2006 and 05.05.2008. The appellant initially filed a civil suit for recovery, but the Respondent invoked Section 8 of the Arbitration and Conciliation Act, 1996 (A&C Act, 1996), leading to a reference to arbitration. Subsequently, on failure to mutually appoint an arbitrator, the Delhi High Court appointed a sole arbitrator under Section 11(6) of the A&C Act, 1996.
- During the arbitral proceedings, at the stage of framing of issues, the Respondent raised a plea that the claims were barred by limitation and filed an application under Section 16, contending that the arbitral tribunal lacked jurisdiction. The arbitrator rejected this plea and proceeded with the arbitration.
- Despite this, the Respondent challenged the rejection of the Section 16 plea by filing an application under Section 34 before the District Court, which was entertained and decided on the merits. The matter was thereafter carried in appeal under Section 37 before the Delhi High Court, which led to the core issue before the Supreme Court regarding the maintainability of such proceedings.
- The Supreme Court noted that under Sections 16(5) and 16(6) of the A&C Act, once a jurisdictional plea is rejected, the arbitral proceedings must continue, and such rejection can be challenged only after the final award under Section 34, and not at an intermediate stage.

ISSUES

- Whether the Respondent was entitled to file an application under Section 34 of the Arbitration Act against the learned Arbitrator's order dated 19.05.2023, under Section 16(2), rejecting the plea that she lacked jurisdiction.
- Whether, in terms of the scheme of Sections 16(5) and 16(6), a challenge to rejection of a jurisdictional plea can be made only after the final award.
- Whether an appeal under Section 37 would lie when the application under Section 34 itself was not maintainable.

DECISION

- The Respondent was not entitled to file an application under Section 34 of the Arbitration Act against the order of the arbitral tribunal rejecting the plea under Section 16(2).
- The Court held that where a plea of lack of jurisdiction is rejected under Section 16, there is no option for the party aggrieved... except to wait till the conclusion of the arbitral proceedings and then raise that issue... under Section 34 against the final award.
- It was held that entertaining such a Section 34 application at an intermediate stage is contrary to the scheme of Sections 16(5) and 16(6), which require continuation of proceedings till the award.
- Consequently, as the said application was not even maintainable, the question of an appeal under Section 37 did not arise, and the High Court erred in deciding the matter on merits; the impugned judgment was set aside.
- Thus, an order rejecting a Section 16 plea cannot be treated as an interim award.
- Appeal under Section 37 lies only when the plea of lack of jurisdiction is accepted, not when it is rejected.

Home Care Retail Marts (P) Ltd. v. Haresh N. Sanghavi, 2026 SCC OnLine SC 670

EDITOR'S COMMENTS

- The judgment clarifies that “any party”, including an unsuccessful party in arbitration, may invoke Section 9 at the post-award stage, and that the expression “a party” cannot be restricted based on the outcome of arbitral proceedings.
- The Court emphasizes that while such a right exists, courts must exercise “care, caution and circumspection” while dealing with Section 9 of the Arbitration and Conciliation Act, 1996 (A&C Act, 1996) applications filed by an unsuccessful party.



BACKGROUND

- The matter arose from a batch of appeals before the Supreme Court concerning the scope of Section 9 of the A&C Act, 1996 at the post-award stage.
- In the underlying cases, arbitral awards had already been passed, and the parties who had lost in arbitration sought interim protection under Section 9 while challenging the awards under Section 34.
- Several High Courts (Bombay, Delhi, Madras, Karnataka) had taken the view that only the successful party (award-holder) can seek interim measures post-award, on the ground that Section 9 is meant to protect the “fruits of the award”.
- Other High Courts (Telangana, Gujarat, Punjab & Haryana) had taken a contrary view that any party to the arbitration, including the unsuccessful party, can seek interim relief if circumstances justify it.
- The unsuccessful parties argued that if an award is set aside under Section 34, their underlying contractual rights revive, and in the absence of interim protection, the subject matter or assets may be dissipated, rendering the challenge proceedings ineffective.
- The opposing argument was that once an award is passed, rights stand crystallised in favour of the successful party, and allowing a losing party to seek interim relief would undermine the finality of arbitral awards.

ISSUE

The principal issue before the Supreme Court was whether a party that has lost in arbitral proceedings and has no enforceable award in its favour can maintain an application under Section 9 of the A&C Act, 1996 at the post-award stage.

DECISION

- The Supreme Court held that the expression “a party” in Section 9 includes any party to the arbitration agreement, without distinguishing between a successful and unsuccessful party.
- Restricting Section 9 only to award-holders would amount to judicially rewriting the statute, which is impermissible where the language is clear and unambiguous.
- Section 9 expressly permits interim relief before, during, and after the arbitral award (but before enforcement), and contains no limitation restricting relief to successful parties.
- The Court rejected the “fruits of the award” theory, holding that Section 9 is intended not merely to protect enforcement, but to preserve the subject matter of arbitration and the amount in dispute.
- Sections 34, 36 and 9 operate in distinct spheres while Sections 34 and 36 deal with challenge and enforcement, Section 9 is concerned with interim protection of rights, and Section 36 does not safeguard underlying assets, potentially leaving an unsuccessful party remediless.
- The Court held that arbitral proceedings do not conclude upon passing of the award, as courts may set aside, modify, or sever the award, necessitating interim protection during the challenge stage.
- The judgments of the Bombay, Delhi, Madras and Karnataka High Courts denying Section 9 relief to unsuccessful parties were held to not lay down good law, while the contrary view of Telangana, Gujarat and Punjab & Haryana High Courts was upheld.
- However, such relief is not automatic and will be granted only in rare and compelling cases, subject to the tests of prima facie case, balance of convenience, and irreparable harm, with a higher threshold applicable to unsuccessful parties.

Rajiv Gaddh v. Subodh Parkash, 2026 INSC 302 (Supreme Court of India)

CASE SUMMARY

- In *Rajiv Gaddh v. Subodh Parkash*, the dispute arose out of joint dealings between the parties in relation to the purchase of land at Hoshiarpur and related business arrangements, governed by agreements dated 02.04.2013 containing an arbitration clause. Arbitration was invoked by the respondent, and proceedings were conducted before a sole arbitrator, where both parties filed their claims and defences.
- During the course of arbitration, the respondent stopped participating, raised allegations of bias, and expressly communicated that he would not continue in the proceedings. The arbitrator proceeded ex-parte and passed an award, granting relief to the appellant and dismissing the respondent's claims.
- Thereafter, relying on a subsequent Supreme Court judgment upholding the validity of the land auction, the respondent sought to initiate fresh arbitration by issuing a new notice and filing a fresh application under Section 11 for the appointment of an arbitrator. The High Court allowed the application, leaving issues like res judicata to be decided by the arbitral tribunal.
- The Supreme Court held that the respondent had clearly abandoned the earlier arbitration proceedings and that the subsequent application was based on the same cause of action. It further held that the later judgment did not create any fresh cause of action as it did not concern disputes between the parties.
- Applying the principles of Order 23 Rule 1 CPC, the Court held that a party who abandons proceedings without liberty cannot initiate fresh proceedings on the same cause of action, as it would amount to abuse of process and is barred on grounds of public policy. The impugned order was set aside, and the appeal was allowed.

DECISION

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