

BRIEF BITES

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OCT 2025

Legal Updates, Insights and Summary Judgements

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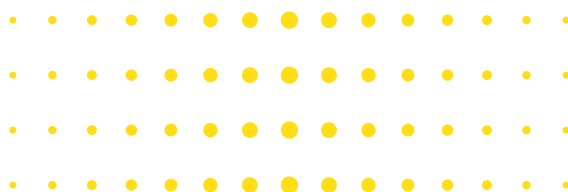
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Recent Judgements

CIVIL

Capri Global Capital Limited vs M/s Divya Enterprise and Others (Interim Application (L) No. 25700 of 2025)



In the instant case, the Bombay High Court ruled on whether a suit for the enforcement of a mortgage can be referred to arbitration under Section 8 of the Arbitration and Conciliation Act, 1996 ("**the Act**"). The Court held that such a dispute is not arbitrable because the enforcement of a mortgage is an action in rem (a right against the world at large), which can only be adjudicated by a public forum like a civil court, not a private forum like an arbitral tribunal.

The Plaintiff, a financial institution, had extended loans to the Defendant developers for a redevelopment project. These loans were secured by a mortgage over the developers' rights in the project, including unsold flats. When the developers defaulted, the Plaintiff filed a suit for recovery of its dues and for enforcement of the mortgage. The loan and mortgage agreements contained arbitration clauses. Citing these clauses, the developers filed an application under Section 8 of the Act, seeking to refer the dispute to arbitration. They argued that the Plaintiff's claim was essentially for the recovery of money, which is a right *in personam* and therefore arbitrable. They also claimed that the housing society (Defendant No. 5), which was not a party to the arbitration agreement, was deliberately impleaded to avoid arbitration.

The Plaintiff opposed the application, arguing that a suit for the enforcement of a mortgage is non-arbitrable. It contended that the housing society was a necessary party against whom specific reliefs were sought, and since the dispute involved a non-signatory to the arbitration agreement, it could not be referred to arbitration. The Plaintiff relied on the Supreme Court's decisions in *Booz Allen and Hamilton Inc. v. SBI Home Finance Limited* and *Vidya Drolia v. Durga Trading Corporation* to argue that mortgage enforcement suits are actions in rem.

The High Court, in a detailed analysis, affirmed the legal position established in *Booz Allen (supra)*, which held that a mortgage suit involves the rights of various parties (including third parties) and must be decided by a court of law under the specific procedures of the Transfer of Property Act, 1882, and the Code of Civil Procedure, 1908. The Court clarified that subsequent judgments, including *Vidya Drolia (supra)* and *Emmar MGF Land Limited v. Aftab Singh*, have consistently upheld this principle, even after the 2015 amendment to Section 8 of the Act. The Court also agreed that the presence of the housing society, a necessary party, and the non-bifurcation principle laid down in *Sukanya Holdings Pvt. Ltd. v. Jayesh H. Pandya* were additional grounds for refusing the reference. Accordingly, the Court rejected the developers' application, holding that the dispute was incapable of being resolved through arbitration.



Rajul Manoj Shah vs Kiranbhai Shakrabhai Patel & Anr. (Civil Appeal No. of 2025 arising out of SLP (C) No. 5635 of 2023)

In the instant case, the Supreme Court ruled on two critical procedural issues under the Code of Civil Procedure, 1908 ("**CPC**"): first, whether a defendant can file a counterclaim directed solely against a Co-Defendant; and second, whether such a counterclaim can be entertained after the issues in the suit have already been framed. The Court held that a counterclaim filed well after the framing of issues is barred, and that a counterclaim directed solely against a Co-Defendant is not maintainable.

The Appellant-Plaintiff had filed a suit in 2012 seeking a declaration that her sister-in-law (Defendant no. 1) had no right to sell her undivided share in a joint family property to Defendant no. 2. After Defendant no. 1 passed away, a court officer was appointed to represent her estate. In 2021, nearly nine years after the suit was filed and two years after the issues were framed, Defendant no. 2 filed an application to add a counterclaim seeking specific performance of the sale agreement against the estate of Defendant no. 1. The Trial Court dismissed the application on grounds of inordinate delay and it being impermissible to file a counterclaim against a Co-Defendant. However, the High Court allowed the application.

The Appellant argued before the Supreme Court that the High Court erred, as a counterclaim cannot be filed after issues are framed, and Order VIII Rule 6A of the CPC does not permit a counterclaim solely against a Co-Defendant. The Respondent (Defendant no. 2) contended that the cause of action for the counterclaim arose only after the court officer was appointed and that the relief of partition sought in the counterclaim also involved the Plaintiff.

The Supreme Court, setting aside the High Court's order, reaffirmed the legal position on both issues. Relying on its decision in *Rohit Singh & Ors. v. State of Bihar* ((2006) 12 SCC 734), the Court held that under Order VIII Rule 6A, a counterclaim must be directed against the Plaintiff, and a claim made solely against a Co-Defendant cannot be sustained as a counterclaim.

On the issue of delay, the Court cited *Ashok Kumar Kalra v. Wing CDR. Surendra Agnihotri* ((2020) 2 SCC 394), holding that while the CPC does not stipulate an express time limit, the outer limit for filing a counterclaim is before the issues are framed. Allowing a counterclaim after the suit has substantially progressed would defeat the objective of speedy justice. The Court concluded that the Trial Court was correct in rejecting the application, and the High Court had erred in interfering with that order.

ARBITRATION

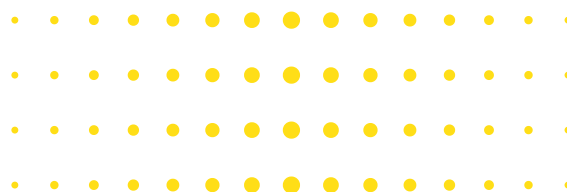
Offshore Infrastructures Limited vs M/s Bharat Petroleum Corporation Limited (Civil Appeal Nos. OF 2025 arising out of SLP (C) No. 22105-22106 OF 2024)



In the instant case, the Supreme Court ruled on two significant issues in arbitration law: first, whether a court can appoint an arbitrator when the contractually agreed appointment mechanism becomes invalid due to statutory amendments; and second, the applicability of the COVID-19 pandemic-related extension of limitation periods to an application for arbitrator appointment. The Court held that the invalidity of a procedural clause for appointing an arbitrator does not nullify the entire arbitration agreement, and the court is empowered to appoint an arbitrator to uphold the parties' intent. Further, it affirmed that the limitation period excluded by its orders in *In Re: Cognizance for Extension of Limitation* must be applied to applications under Section 11 of the Arbitration and Conciliation Act, 1996 ("**1996 Act**").

The dispute arose from a contract awarded by Bharat Petroleum Corporation Limited ("**Respondent**") to Offshore Infrastructures Limited ("**Appellant**"). After project completion, the Appellant raised its final bill on 20.03.2018 and issued a "No Claim Certificate" on 03.10.2018. On 14.06.2021, the Appellant invoked arbitration under Clause 8.6 of the General Conditions of Contract (GCC), which named the Respondent's Managing Director or his nominee as the sole arbitrator. The Appellant argued that this clause was invalid under Section 12(5) of the 1996 Act (as amended in 2015) and proposed independent names. The Respondent refused to entertain the claims. The Appellant filed an application under Section 11(6) of the 1996 Act before the High Court 15.03.2022, which dismissed it as time-barred, holding that the three-year limitation period ran from the date of the "No Claim Certificate" (03.10.2018) and had expired on 21.04.2021.

Before the Supreme Court, the Appellant argued that its application was within the limitation period, especially after excluding the period from 15.03.2020 to 28.02.2022 as directed by the Court in *In Re: Cognizance for Extension of Limitation* ((2022) 3 SCC 117). Citing *Perkins Eastman Architects DPC v. HSCC (India) Limited* ((2020) 20 SCC 760), the Appellant contended that the ineligibility of the named arbitrator does not extinguish the arbitration agreement itself, and the court can appoint an independent arbitrator.



The Respondent countered that the cause of action arose when the final bill was raised in 2018, making the application time-barred. It further argued that since the contractually stipulated appointment mechanism in Clause 8.6 had become inoperative by law, the entire arbitration agreement was rendered non-existent.

The Supreme Court, allowing the appeal, first addressed the validity of the arbitration agreement. It relied on its precedents in *Perkins Eastman and Voestalpine Schienen GmbH v. Delhi Metro Rail Corporation Limited* ((2017) 4 SCC 665) to hold that the legislative intent behind Section 12(5) of the 1996 Act is to ensure the neutrality and impartiality of arbitrators. The Court reasoned that the core of the contract—the agreement to refer disputes to arbitration—cannot be rendered nugatory merely because the procedure for appointment has become legally inoperative. A purposive interpretation is required, and therefore, the court is vested with the power under Section 11(6) to appoint an arbitrator.

On the issue of limitation, the Court referred to *Geo Miller and Company Private Limited v. Chairman, Rajasthan Vidyut Utpadan Nigam Limited* ((2020) 14 SCC 643), stating that the cause of action arose on 21.04.2018, when the final bill became due. While the application filed on 15.03.2022 would normally be time-barred, the Court held that it was unjust not to apply the benefit of its order in *In Re: Cognizance*. By excluding the period from 15.03.2020 to 28.02.2022, the Appellant's application was found to be within the limitation period.

Accordingly, the Supreme Court set aside the High Court's orders and referred the matter to the Delhi International Arbitration Centre to appoint an arbitrator to adjudicate the dispute.

ARBITRATION



Oil and Natural Gas Corporation Ltd. vs M/s G & T Beckfield Drilling Services Pvt. Ltd. (Civil Appeal No. 11324 of 2025)

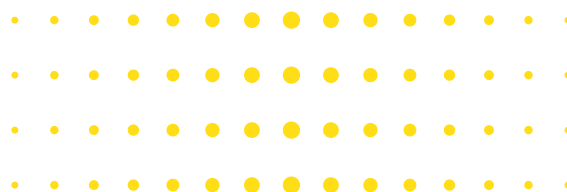
ADVOCATES AND SOLICITORS

In the instant case, the Supreme Court ruled on the power of an arbitral tribunal to award *pendente lite* interest where the underlying contract contains a clause prohibiting interest on delayed or disputed payments. The Court held that a contractual clause merely barring interest on a “delayed payment / disputed claim” is not sufficient to oust the arbitrator’s statutory power under Section 31(7) of the Arbitration and Conciliation Act, 1996 (“**1996 Act**”), unless the prohibition is explicit and comprehensive.

The dispute arose from an arbitral award directing Oil and Natural Gas Corporation Ltd. (“**the appellant**”) to pay certain amounts to M/s G & T Beckfield Drilling Services Pvt. Ltd. (“**the respondent**”) along with *pendente lite* interest at 12% per annum from the date the claim was filed. The appellant challenged the award, citing Clause 18.1 of their agreement, which stated, “No interest shall be payable by ONGC on any delayed payment /disputed claim.” The District Judge set aside the award, but the Gauhati High Court restored it. The Supreme Court granted leave to appeal limited only to the question of the award of interest.

The appellant argued that Clause 18.1, read with Section 31(7)(a) of the 1996 Act, created an express bar on the arbitrator’s power to award interest for the period before the award. The respondent contended that the clause did not specifically prohibit the arbitral tribunal from awarding *pendente lite* interest on a claim that was found to be wrongfully withheld after adjudication.

The Supreme Court, after analyzing its previous judgments, distinguished between clauses that merely bar interest on delayed payments and those that contain a comprehensive and unambiguous bar on interest in any situation of dispute. The Court found that Clause 18.1 fell into the former category. It held that to denude an arbitrator of the power to award *pendente lite* interest, the contractual bar must be explicit or clear by necessary implication. The phraseology in Clause 18.1 was not wide enough to constitute such a bar, as it did not prohibit the payment of interest in all circumstances or “in any respect whatsoever.”



The Court concluded that the arbitral tribunal was within its jurisdiction to award *pendente lite* interest. Consequently, the appeal was dismissed, and the arbitral award was affirmed in its entirety. This ruling clarifies the high threshold required for a contractual clause to be interpreted as a complete bar on an arbitrator's power to award *pendente lite* interest, reinforcing the principle that such a bar will not be readily inferred.

CRIMINAL

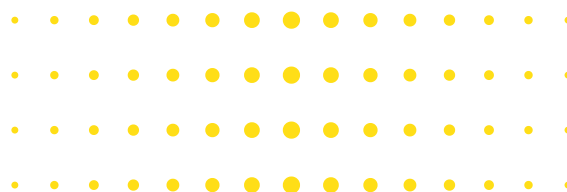
Abhay Narendra Lodha v. Directorate of Enforcement & Anr., Bombay High Court, Justice Manish Pitale, decided on September 10, 2024 (BA No. 2838 of 2024).



In *Abhay Narendra Lodha v. Directorate of Enforcement & Anr.*, the Bombay High Court (Justice Manish Pitale) heard a bail application under the Prevention of Money Laundering Act, 2002 (PMLA). The applicant, arrested on 30 August 2023 in connection with ECIR No. MBZO-I/06/2022, sought bail solely on medical grounds under the proviso to Section 45 of the Act. His counsel argued that he suffered from severe health conditions, including brain hemorrhage, AV malformation, and repeated seizures, supported by medical reports and prior observations of the Special PMLA Court. It was contended that continued incarceration posed a grave risk to his health and that the statutory protection for “sick or infirm” persons must be given due effect.

The Enforcement Directorate opposed the plea, citing a J.J. Hospital report indicating that the applicant’s condition was stable and manageable, even in custody, with regular medical supervision. However, the Court noted that the medical documents demonstrated a consistent and serious pattern of illness. Referring to the Supreme Court’s rulings in *Kavakuntla Kavitha v. ED, Union of India v. K.A. Najeeb*, and *Manish Sisodia v. ED*, the Court emphasized that individuals categorized as “sick or infirm” under the PMLA are entitled to special consideration and that prolonged pre-trial detention violates the right to a speedy trial under Article 21 of the Constitution.

Holding that the applicant clearly fell within the “sick or infirm” category and that the trial was unlikely to commence soon, the Court granted bail subject to strict conditions. These included furnishing a PR bond of ₹1,00,000, surrendering the passport, remaining within Greater Mumbai, and refraining from tampering with evidence or influencing witnesses. The order clarified that these observations were limited to the bail stage and would not affect the merits of the case.



Case Summary



WHITE & BRIEF
ADVOCATES AND SOLICITORS

Civil Appeal Nos.: 2042–2047/2015 with Civil Appeal No. 9902/2017

Date of Judgment: October 9, 2025

Coram: Hon'ble Mr. Justice Manoj Misra and Hon'ble Mr. Justice Nongmeikapam Kotiswar Singh

issue

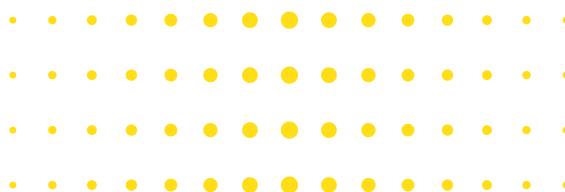
The core issue before the Supreme Court was whether a registered purchasing dealer is entitled to claim Input Tax Credit (ITC) under the Delhi Value Added Tax Act, 2004 (DVAT Act) when the registered selling dealer, despite collecting tax, fails to deposit it with the Government.

Facts

The respondent dealers had purchased goods from selling dealers who were duly registered under the DVAT Act. The respondents paid tax on these purchases as per valid tax invoices issued by the sellers. However, after the transactions, the selling dealers failed to deposit the collected tax with the Government and their registrations were subsequently cancelled. The Delhi High Court found that the purchasers had acted in good faith and were bona fide dealers. Since there was no evidence of fraud or collusion and the invoices were genuine, the High Court held that ITC could not be denied to them and directed the department to grant the benefit after due verification.

Relevant Provisions

- **Section 9(1)** of the DVAT Act permits a registered dealer to claim ITC for purchases made during the tax period if the goods are used for making taxable sales.
- **Section 9(2)(g)** imposes a restriction that ITC shall be available only if the tax collected by the selling dealer has actually been deposited with the Government or lawfully adjusted against output tax liability and correctly reflected in the return.



Precedent Reference

The Court referred to the Delhi High Court's decision in **On Quest Merchandising India Pvt. Ltd. v. Government of NCT of Delhi, 2017** SCC Online Del 13037, where Section 9(2)(g) of the DVAT Act was "read down." The High Court in that case held that a bona fide purchasing dealer, who entered into genuine transactions with registered sellers issuing valid tax invoices, cannot be denied ITC merely because the seller defaulted in depositing tax. The department's recourse lies against the defaulting seller, not the innocent purchaser. However, if there is material to prove collusion between the purchasing and selling dealers, the department can proceed under Section 40A of the Act.

This interpretation was earlier upheld by the Supreme Court when it dismissed the SLP in **Commissioner of Trade and Taxes, Delhi v. Arise India Ltd. & On Quest Merchandising India Pvt. Ltd. (2018 (1) TMI 555 – SC Order)**.

Held

The Supreme Court observed that there was no dispute regarding the registration of the selling dealers at the time of the transactions and no challenge to the genuineness of the invoices. Since the respondents had acted bona fide and paid taxes in accordance with the law, the Court found no reason to deny them ITC. It reiterated that penalizing purchasers for the default of sellers would be contrary to fairness and equity. The department must instead pursue action against the defaulting selling dealers for non-payment of tax.

Decision

The Supreme Court upheld the Delhi High Court's order and dismissed the appeals filed by the department. The Court directed that the benefit of ITC be granted to the respondents after due verification. All pending applications were also disposed of.

Key Citations

1. *Commissioner of Trade and Taxes Delhi v. Arise India Ltd. & On Quest Merchandising India Pvt. Ltd.*, 2018 (1) TMI 555 (SC)
2. *On Quest Merchandising India Pvt. Ltd. v. Government of NCT of Delhi*, 2017 (10) TMI 1020 (Del HC)
3. *Shanti Kiran India Pvt. Ltd. v. Commissioner Trade & Tax Dept.*, 2013 (2) TMI 80 (Del HC)

Summary

The Supreme Court reaffirmed that bona fide purchasing dealers who have paid tax to registered selling dealers and hold genuine invoices cannot be denied ITC solely because the seller failed to remit the tax. The ruling ensures that innocent purchasers are protected under the DVAT framework, and liability for default rests on the seller who collected but did not deposit the tax. The judgment upholds the Delhi High Court's reading down of Section 9(2)(g) to align with principles of fairness under Article 14 of the Constitution.

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