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Dispute Resolution & Arbitration

Monthly Update
June 2024

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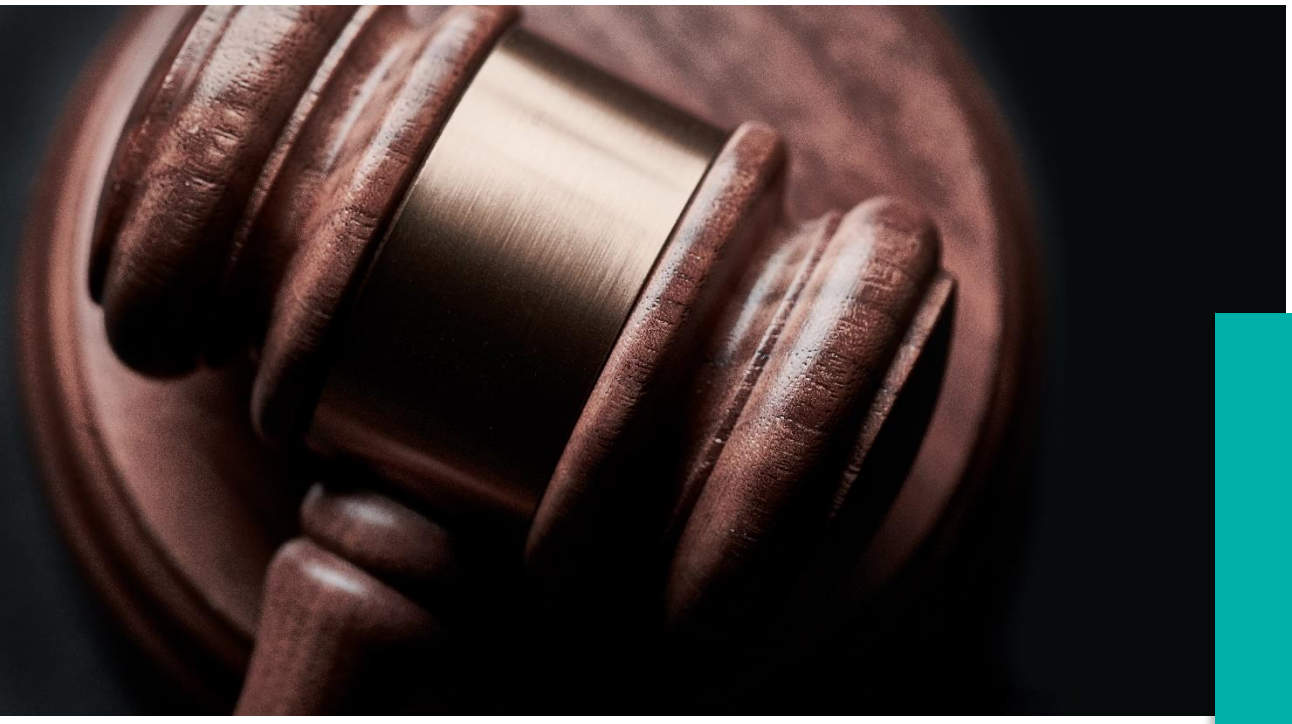
DISPUTE RESOLUTION AND ARBITRATION UPDATE



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Delhi Metro Rail Corporation Ltd. v. Delhi Airport Metro Express Pvt. Ltd

Supreme Court of India | 2024 SCC OnLine SC 522

Background facts

- In 2008, Delhi Airport Metro Express Pvt Ltd (**Respondent**) was granted a concession agreement to construct, operate, and maintain the Delhi Airport Metro Express Line until August 2038. Delhi Metro Rail Corporation (**Appellant**) was in charge of land acquisition and civil structures, while Respondent handled the design, supply, installation, testing, and commissioning of railway systems in order to provide for metro rail connectivity between New Delhi Railway Station and Indira Gandhi International Airport and other locations within Delhi.
- In April 2012, the Respondent requested a deferment of the concession fee due to delays by Appellant in providing access to stations and slow retail activity. On July 08, 2012, the Respondent halted operations, citing safety concerns due to alleged defects in construction and design by Appellant. Thereafter, on July 09, 2012, the Respondent issued a notice listing 8 defects and demanded Appellant to cure these within 90 days, failing which it would terminate the agreement. Subsequently, on October 08, 2012, the Respondent terminated the agreement after the 90-day period lapsed without resolution.
- Due to the unsuccessful conciliation attempt, the Appellant resorted to arbitration to resolve the disputes. In May 2017, the Arbitral Tribunal ruled in favour of the Respondent, awarding them INR 2782.33 crores plus interest, along with other compensations.
- Being aggrieved, the Appellant challenged the award in the Delhi High Court, where a Single-Judge dismissed their application. Pursuant thereto, the Division Bench of the High Court partly allowed the Appellant's appeal.
- Being aggrieved by the aforesaid, the Respondent appealed to the Supreme Court of India (SC), which restored the arbitral award. The Appellant's review petition was dismissed, leading to the present curative petition before the SC.

Issues at hand?

- Whether the curative petition is maintainable based on the facts and circumstances of the case?
- Whether the SC was justified in restoring the arbitral award, which had been set aside by the Division Bench of the High Court on the ground of 'patent illegality'?

Decision of the Court

- At the outset, the SC reiterated the principles from ***Rupa Hurra v. Ashok Hurra***[1], emphasizing that curative jurisdiction should be invoked only in cases where there is a grave miscarriage of justice due to the Court acting beyond its jurisdiction, and therefore held that the curative petition is maintainable.
- The SC reaffirmed the principles governing judicial interference with arbitral awards under Section 34 and Section 37 of the Arbitration and Conciliation Act. The SC further referred to previous judgments, such as ***Associate Builders v. DDA***[2] and ***Ssangyong Engineering and Construction Co. Ltd v. NHAI***[3], highlighting that courts should only interfere with arbitral awards that are irrational or devoid of reasoning to the extent that no reasonable person would reach the same conclusion. The SC then emphasized that awards lacking evidence or ignoring vital evidence could be considered perverse and liable to be set aside.
- The SC also clarified that decisions under Section 37 are not subject to appeal, but the constitutional right to challenge such decisions under Article 136 remains unaffected. However, the SC emphasized that the jurisdiction under Article 136 should be sparingly invoked and limited to exceptional circumstances.
- The SC determined that the arbitral award in favor of the Respondent was tainted by manifest illegality and the Arbitral Tribunal failed to consider crucial evidence and misinterpreted the termination clause of the concession agreement. It further held that the Arbitral Tribunal also failed to differentiate between 'curing defects' and 'taking effective steps to cure defects.' and that the Arbitral Tribunal incorrectly concluded that the presence of defects at the end of the cure period indicated a failure to take effective steps, which did not align with the terms of the concession agreement.
- The SC held that the Arbitral Tribunal overlooked vital evidence, particularly the CMRS certificate and the actions taken by the Appellant to cure the defects. The SC noted that the Appellant had taken substantial steps to address the defects, and this progress should have been considered under the 'effective steps' clause of the agreement.
- Therefore, the SC invoked its powers under Article 142 to set aside its earlier decision and upheld the judgment of the Division Bench of the High Court

HSA
Viewpoint

In this case, the SC was guided by the principles outlined in the judgment of Rupa Hurra and has historically exercised great caution in revisiting its own judgments. This case represents a rare instance where the Court has deemed it necessary to intervene, highlighting the extraordinary nature of the circumstances. By overturning the arbitral award through a curative petition, the Supreme Court has rightly deviated from the norm thereby curing primary defects in the award passed by the Arbitral Tribunal. This decision establishes that upholding the integrity of the arbitration process is crucial for judiciary so as to foster confidence in arbitration as an efficient and expeditious means of resolving disputes.

Mercator Ltd v. Dredging Corporation of India Ltd

Delhi High Court | 2024 SCC OnLine Del 3075

Background facts

- Mercator Ltd (**Decree Holder**) sought enforcement of 3 arbitral awards against Dredging Corporation of India Ltd. (**Judgment Debtor**).
- The 3 arbitral awards were passed in separate arbitral proceedings conducted in relation to 3 charterparty agreements. Aggrieved by the awards, the judgment debtor filed petitions in order to set aside the awards under Section 68 of the English Arbitration Act, 1996 before the High Court of Justice of England and Wales (**Seat Court**). However, these petitions were dismissed by the Court. When the matter reached the stage of enforcement, the judgment debtor raised similar objections.
- The objections raised by the judgment debtor were: -

  (i) Regarding the Composition of the Arbitral Tribunal: - The arbitration agreement provided that the arbitration proceedings shall be conducted in accordance with the London Maritime Arbitrators Association (**LMAA**). As per the judgment debtor, Rule 5 (a) of the LMAA required that the arbitrators shall be members of the LMAA. However, as per the judgment debtor, the arbitral tribunal comprised of 2 retired judges and a lawyer who were not experts in the field of maritime law according to the judgment debtor. Therefore, as per the judgment debtor, the arbitration enforcement of the award must

[1] Rupa Ashok Hurra v. Ashok Hurra, AIR 2002 SCC 388
[2] Associate Builders vs Delhi Development Authority, 2014 AIR SCW 6861
[3] Ssangyong Engineering and Construction Co. Ltd v. NHAI, AIRONLINE 2019 SC 329

be denied under Section 48 (1)(d) of the Arbitration and Conciliation Act, 1996 (Arbitration Act) as the same contravened with the rules of appointment of arbitrator.

(ii) The Decree Holder argued that the objection regarding the composition of the arbitral tribunal was never raised earlier during the arbitration. Moreover, the Decree Holder argued that the above-mentioned objection was contrary to the case which the Decree Holder pleaded before the Seat Court.

Violation of Merchant Shipping Act, 1958: - As per the judgment debtor, the vessels which were the subject matter of the charterparty agreements were loaded in contravention of Section 313 of the Merchant Shipping Act, and attracted penalties provided under Section 436 of the Merchant Shipping Act. As per the judgment debtor, one of the objects of the Merchant Shipping Act was to safeguard and secure Indian ships, and the award holder's claims conflicted with the public policy of India. Therefore, as per the Judgment debtor, the arbitration was violative of substantive provisions of the Merchant Shipping and therefore contrary to the public policy of India under Section 48(2)(b) of the Arbitration Act.

- According to the Decree holder, the objection regarding violation of the Merchant Shipping Act was already dealt with in the arbitral award as well as the judgment of the Seat Court. The Decree Holder's advocate also drew the Delhi High Court's attention to the submissions made by the judgment debtor before the Seat Court.

Issues at hand?

- Whether contravention of the Merchant Shipping Act, 1958 results in a conflict with the Public Policy of India

Decision of the Court

- The High Court first culled out the principles which govern the exercise of powers and jurisdiction under Section 48 of the Arbitration Act which provides for conditions required for the enforcement of foreign award and meticulously analyzed the scope of public policy under the Arbitration Act. The Court was of the view that public policy in context of foreign awards is to be interpreted narrowly and in consonance with international notions of public policy. The Court held that not all violations of a statute result in contravention of public policy.
- The Court relied on ***Avitel Post Studioz Limited v. HSBC PI Holdings (Mauritius) Limited***[4] wherein Supreme Court observed that "bonafide challenges to arbitral appointments have to be made in a timely fashion and should not be used strategically to delay the enforcement process".
- The Court opined that enforcement of an award should not be declined in cases where the judgment debtor raises the issue pertaining to composition of the arbitral tribunal before the executing court for the first time. This is because such an issue could have been raised by the judgment debtor before the Tribunal and before the seat Court. The Court noted that the parties were already aware of the composition of the arbitral tribunal for almost a decade. According to the court the challenge to the constitution of the arbitral tribunal was the judgment debtor's afterthought.

HSA
Viewpoint

This ruling is based on the principle that any challenge to an arbitral award must be made in a timely manner, and not as a tactic to delay the enforcement of the award. Moreover, it clarifies that the scope for bringing in public policy as a ground for refusing enforcement of a foreign award under Section 48 (2) of the Arbitration Act is narrow in contrast with grounds for challenging an arbitral award under Section 34 of the Arbitration Act. The judgment upholds the sanctity of arbitration agreements and promotes the enforcement of foreign awards in India.

Dani Wooltex Corporation & Ors v. Sheil Properties Pvt. Ltd. & Anr

Supreme Court of India | Civil Appeal No. 6462 of 2024

Background facts

- Dani Wooltex Corporation (**First Appellant**), a partnership firm owning land in Mumbai, had entered into a Development Agreement dated August 11, 1993 (**Development Agreement**) with Sheil Properties (**First Respondent**), a real estate developer. Additionally, a Memorandum of Understanding (**MOU**) entered into between the First Appellant and Marico Industries (**Second Respondent**), a consumer goods company, allowed the Second Respondent to purchase part of the First Appellant's property. The Second Respondent issued a public notice inviting objections to the said MOU, and the First Respondent objected, asserting that any transaction between the First Appellant and the Second Respondent would be subject to the Development Agreement.
- A dispute arose between the First Appellant and the First Respondent, leading the First Respondent to file a suit for the specific performance of the MOU, as modified by certain consent terms, and the Second Respondent was also made a party to this suit. Meanwhile, the Second Respondent also filed a suit against the First Appellant, with the First Respondent also named a

[4] Avitel Post Studioz Limited & Ors. v. HSBC PI Holdings (Mauritius) Limited, Civil Appeal Nos. 3825-3836 of 2024.

defendant. Eventually, a senior member of the Bar was appointed as the sole arbitrator to resolve the disputes among the three parties. The appointment order, passed on October 13, 2011 in the Second Respondent's suit, referred the dispute to arbitration. On November 17, 2011, the First Respondent's suit was also referred to the same Arbitrator. Thus, the Arbitral Tribunal was tasked with handling claims from both the First Respondent and the Second Respondent against the First Appellant.

- The Second Respondent's claim was heard first, resulting in an arbitral award on May 6, 2017. However, the proceedings for the First Respondent's claim did not proceed forward. Subsequently, on November 26, 2019, the First Appellant requested the Arbitral Tribunal, for the dismissal of the First Respondent's claim on the grounds of abandonment. This was followed by another communication on January 7, 2020. In response, the Arbitral Tribunal scheduled a meeting for March 11, 2020, which the First Respondent did not attend. A subsequent meeting on March 18, 2020 was also not held due to the COVID-19 pandemic. The next meeting took place on August 12, 2020, where the Arbitral Tribunal directed the First Appellant to file a formal application for dismissal, which they did on August 27, 2020.
- The First Appellant argued that the First Respondent's inaction for 8 years indicated abandonment of the claim. However, the First Respondent opposed this, contending no ground existed for dismissal under Section 32(2)(c) of the Arbitration and Conciliation Act, 1996 (Act). Despite the opposition to the application for dismissal, on December 1, 2020, the Arbitral Tribunal terminated the proceedings, placing reliance on the decision given in the case of ***NRP Projects Pvt. Ltd. v. Hirak Mukhopadhyay & Anr***[5]. The First Respondent challenged this termination before the Bombay High Court, which set aside the Arbitral Tribunal's order and directed the continuation of the proceedings.
- Aggrieved by the said order of the Bombay High Court, the First Appellant challenged the said order before the Supreme Court (SC), hence the present appeal.

Issue at hand?

- Whether the termination of the arbitral proceedings by the Arbitral Tribunal under Section 32(2)(c) of the Act was valid?

Decision of the Tribunal

- At the outset, the SC delved into the authority of the Arbitral Tribunal, particularly in reference to Section 32(2)(c) of the Act, which outlines circumstances leading to the termination of arbitral proceedings. The SC emphasized that such termination must be justified by a careful assessment of whether continuation of the arbitral proceedings becomes genuinely unnecessary or impossible. The SC, after hearing the submissions from all parties, observed that mere non-appearance of a party, as in the present case, does not automatically render proceedings unnecessary, and furthermore, abandonment of claim must be unmistakably established through compelling evidence.
- Additionally, the SC also noted that in the present case, separate arbitral proceedings were initiated involving distinct claimants and respondents. Furthermore, despite no directive from the Arbitral Tribunal to simultaneously hear the First Respondent's claim alongside the Second Respondent's, the First Respondent diligently attended hearings until the passing of the award on the Second Respondent's claim. Accordingly, the SC was of the opinion that there was no express or implied abandonment of claim by the First Respondent because the conduct of a claimant who, after filing his statement of claim, does not move the Arbitral Tribunal to fix a date for the hearing, per se, would not amount to the abandonment of the claim or to infer that the proceedings have become unnecessary.
- Furthermore, the SC also opined that it is the Arbitral Tribunal's duty to fix a meeting for hearing even if parties to the proceedings do not make such a request. It is the duty of the Arbitral Tribunal to adjudicate upon the dispute referred to it. Accordingly, the SC held that the reasoning given by the Arbitral Tribunal for dismissing the claim of the First Respondent was insufficient.
- Consequently, the SC Arbitral Tribunal's termination of proceedings, filed by the First Respondent, lacked a substantive basis and sufficient reasoning and thus the Arbitrator had committed illegality in holding that there was an abandonment of claim by the First Respondent. Therefore, the SC concluded that the Bombay High Court was correct in setting aside the termination order and directing the Arbitral Tribunal to continue the arbitration.

HSA
Viewpoint

In our opinion, this judgment given by the Supreme Court emphasizes the importance of procedural fairness and detailed reasoning in arbitral decisions. The Supreme Court has correctly set the tone that the parties must always be given a chance to present their case, in adherence with the principles of natural justice, before any order is passed to their detriment.

[5] 2012 SCC OnLine Cal 10496

The Commissioner, Commercial Tax U.P. v. R.P. Milk Made Products (P) Ltd.

Allahabad High Court I Sales/Trade Tax Revision No. 123 of 2023

Background facts

- The Commissioner of Commercial Tax, U.P. (**the revisionist**) challenged an order dated March 20, 2023 (**impugned order**), issued by the Commercial Tax Tribunal (**Tribunal**) in favor of R.P. Milk Made Products (P) Ltd (**assessee**). The impugned order dealt with the taxability of sales following a business closure. Aggrieved by the impugned order, the revisionist raised the following key legal questions in the present revision petition:
  - (i) Whether the Tribunal was justified in affirming the first appellate authority's decision that the turnover from the sale of old machinery and equipment, after business closure, amounting to INR 1,33,20,839/-, is not taxable under the amended provisions of Section 2(e) of the Uttar Pradesh Value Added Tax Act, 2008 (**UPVAT Act**).
  - (ii) Whether the Tribunal was correct in not considering the liability for interest payment on the admitted and assessed turnovers of INR 1,70,31,900/- and INR 1,33,20,839/-, respectively, under Section 33(2) of the UPVAT Act.
- The key contention raised by the revisionist in line with the abovementioned legal questions was that the amended definition of 'business' under Section 2(e) of the UPVAT Act includes any transaction, even after business closure, relating to the sale of goods acquired during the business period. The said definition was expanded to ensure that sales of assets, including those made after the cessation of business activities, fall within the tax net and to simultaneously close any potential loopholes that could allow businesses to evade tax on assets sold post-closure

Issue at hand?

- Whether the sale of old machinery and various equipment items—specifically valued at INR 41,73,994/- for machinery and INR 91,46,845/- for sipper boxes, racks, MS tables, moulds, laboratory equipment, office equipment, fire extinguishers, stabilizers, and delivery vehicles—should be subject to tax under the amended definition of "business" in Section 2(e) of the UPVAT Act?

Decision of the Court

- Before proceeding with the matter at hand, the HC sought fit to take note of the following relevant statutory definitions given under the UPVAT Act:
  - Section 2(e): Defines "business" and includes transactions even after business closure if related to the sale of goods acquired during the business period. This section was amended to clarify that sales made after business closure, but involving goods acquired during business operations, are taxable.
  - Section 2(f): Defines "capital goods" including plant and machinery used for manufacturing or processing goods for sale.
  - Section 2(m): Defines "goods" as movable property, excluding capital goods as defined in the Act. This distinction is significant because it determines whether an asset sale falls under the taxable category post-business closure.
- The HC noted that the Tribunal and the First Appellate Authority had found that the items sold after business closure were categorized as plant and machinery, thus falling under "capital goods" as per Section 2(f) of the UPVAT Act. Consequently, these items were not "goods" under the definition in Section 2(m), and their sale was not taxable under the amended Section 2(e).
- The revisionist argued that the 2014 amendment to Section 2(e) meant any post-closure sale of goods acquired during the business should be taxed. They claimed that the sold items were movable assets and thus "goods" under Section 2(m). It was emphasized that the broad definition of "goods" should encompass all movable assets sold post-closure, ensuring no taxable transactions are omitted.
- The assessee countered by stating that the items sold were "capital goods" and therefore not subject to tax. Furthermore, the assessee relied on the cases of ***Narmada Bearing (P) Limited v. Commissioner of Trade Tax***[6] and ***Rajesh Paper Mills Limited v. Commissioner, Commercial Tax***[7], to argue that plant and machinery are not "goods" under the UPVAT Act and thus not taxable. These cases were cited to bolster the argument that plant and machinery, even if sold post-

[6] (2010) 14 VLJ 280
[7] 2018- T.L.D.-74

closure, retain their status as "capital goods" and should be excluded from tax under the amended provisions.

- After hearing the submissions made by both sides, the HC upheld the Tribunal's findings, affirming that the items sold post-closure were indeed "capital goods." The HC emphasized that the definition of "business" in the amended Section 2(e) presumes goods sold post-closure were acquired during business operations. However, the legislature deliberately excluded capital goods from this definition. This exclusion highlights the legislative intent to differentiate between regular business goods and capital investments, ensuring only the former are taxed post-closure of the business.
- The HC concluded that the Tribunal's findings were not perverse or patently illegal. The Tribunal, being the final fact-finding authority, determined that the sold items were capital goods, and this determination should not be lightly disturbed. Furthermore, the HC also noted that the High Court's role in revisional jurisdiction is not to re-evaluate facts but to ensure the legal correctness of the Tribunal's decision, and that interfering with the Tribunal's factual findings is unwarranted unless those findings are clearly erroneous or irrational.
- Accordingly, the HC dismissed the revision petition, answering the legal questions in favor of the assessee.

HSA
Viewpoint

In our opinion, the HC's interpretation of amended definition of "business" under Section 2(e) of the UPVAT Act aligns with the legislative intent to exclude capital goods from post-closure taxation, thereby providing clarity and certainty in tax obligations. Accordingly, this judgment serves as a critical reference for future cases involving the sale of business assets post-closure, emphasizing the need for precise statutory interpretation and the significance of legislative intent in tax matters.

Delhi Tourism and Transportation Development Corporation v. Satinder Mahajan

Delhi High Court | O.M.P. (COMM) 337/2021

Background facts

- Satinder Mahajan (**Respondent**) is registered as a medium enterprise under the Micro and Small Enterprises Development Act (**MSME Act**) in Pathankot, Punjab.
- The Respondent entered into an agreement dated January 1, 2016 (**Agreement**) with Delhi Tourism and Transportation Development Corporation (**Petitioner**), for the construction of a bus depot at Kharkhari Nahar Village, New Delhi.
- Disputes arose between the parties, in lieu of which the Respondent filed a claim for its alleged dues before the Facilitation Council under Section 18 of the MSME Act.
- The Facilitation Counsel first adopted conciliation proceedings to resolve the dispute. However, conciliation proceeding failed and was closed on October 15, 2020.
- Thereafter the matter was referred to arbitration. The arbitration proceedings ultimately lead to an award of INR 4,11,55,845/- being passed by the Facility Council in favor of the Respondent.
- Being aggrieved by the aforementioned award the Petitioner filed the present Petition.

Issues at hand?

- Whether the Agreement between the parties contains an exclusive jurisdiction clause for the purposes of the present Petition?
- Whether the seat of the arbitration was, in any event, in Delhi?

Decision of the Court

- The Court held that the Agreement's arbitration clause (Clause 25 of the General Conditions of Contract) neither stipulates an exclusive jurisdiction clause nor provides for the seat of arbitration. The Court further held that the Agreement however allowed the Arbitrator to decide the venue of arbitration.
- The Court further held that the dispute resolution mechanism provided in the Integrity Pact which formed a part of the Agreement and dispute resolution mechanism provided in the Agreement were intended to be entirely different as the Integrity Agreement was not intended to deal with disputes arising out of the Agreement and hence in no event a harmonious construction could be drawn between the two agreements.
- The Court relied on the judgments in the case of ***BGS SGS SOMA JV v. NHPC***[8] and ***Inox Renewables Ltd. v. Jayesh Electricals Ltd***[9] and held that seat of arbitration is determined on the basis of connection with the arbitral proceedings rather than the cause of action or other relating factors where the dispute arose.

HSA
Viewpoint

The significance of the said judgement is that it clarifies that the seat of an arbitration is to be determined on the basis of the connection with arbitral proceedings rather than location and under underling factors where the dispute arose. The judgment further removes all ambiguities and makes it clear that an award passed under Section 18 of MSME Act can be considered to be an arbitral award.

[8] (2020) 4 SCC 234
[9] (2023) 3 SCC 733

- The Court also relied on the judgement in the case of ***Shreyas Marketing v. Micro and Small Enterprises Facilitation Council***[10] where in it was held that an award under Section 18 of the MSME Act is deemed to be an award under the Arbitration Act, 1996 and hence can be challenged in the appropriate court where the seat of the Facility Council was located.
- In view of the above the Court held that it does not have the jurisdiction to entertain the present Petition and accordingly dismissed the present Petition.

Rajiv Surendra Doddanavar & Anr. v. Madhuri Veerdhaval Chalukya & Ors

Bombay High Court | Writ Petition 7194/2021

Background facts

- In the present case, Pralhad Raghavendra Desai (**deceased**) executed 2 Wills (i) Will dated January 2, 2007, in favor of the Petitioner and (ii) Will dated June 24, 2015, in favor of Respondent No. 1.
- Thereafter, Pralhad Desai passed away on March 29, 2017. Respondent No. 1 based on the Will dated June 24, 2015 reported the acquisition of rights to the Talathi, leading to the entry of the mutation in the Register of Mutations, which was then certified and transferred to the Record of Rights.
- Aggrieved by the actions of the Respondent No. 1 the Petitioner while placing reliance on the Will executed in its favor dated January 2, 2007, filed an Appeal (RTS Appeal No. 26 of 2019) under Section 247 of the Maharashtra Land Revenue Code, 1966 (**MLRC**) before the Sub-Divisional Officer (**SDO**). The SDO after hearing the Appeal ruled that the jurisdiction to decide the validity of Wills lies with the Civil Court and that the Mutation Entry No. 829 should be cancelled until the validity of the Wills is determined by the Civil Court.
- Subsequently thereafter, aggrieved by the Order passed by the SDO the Respondent No. 1 appealed before the Additional Collector. The Additional Collector while going through the Appeal noted that Mr. Pralhad Raghavendra Desai appears to have entered into various transactions with respect to the subject land in addition to the two wills executed, a compromise decree involving a third party, Dr. Prafulla Hede in respect to the subject land which is pending execution. The Additional Collector vide its order dated Novem November 27, 2020 upheld the SDO's decision.
- Furthermore, aggrieved by the Additional Collectors Order the Respondent No. 1 filed a revision application under Section 257 of MLRC before the Divisional Commissioner. The Divisional Commissioner ruled on March 26, 2021, that the revenue authorities lack jurisdiction to determine the validity of registered documents such as Wills. It was held that deciding on the mutation entry No. 829's validity would indirectly determine the validity of the 2015 Will, which is subjudice. The Divisional Commissioner overturned the SDO and Additional Collector's orders, reinstating the mutation entry No. 829.
- The Petitioner aggrieved by the Order of the Divisional Commissioner appealed to the State Government through the Minister of Revenue. The Minister on September 28, 2021, upheld the Divisional Commissioner's decision restoring the Mutation Entry No. 829. The Minister while arriving at its decision noted that Respondent No. 1 has been granted a mining lease in respect of the property under order 14.08.2019 which remains unchallenged in Civil Court. The Minister observed that the last Will and Testament (2015 Will) should be accepted for mutation purposes. It was further noted that the validity of the Will cannot be examined by the Revenue Courts and should be established in a court of law. It was further held that as the validity of the Wills were subjudice, it was necessary for the Revenue Authorities to restrain themselves including testing the validity of the mutation entry 829.
- The Petitioner aggrieved by the Order dated September 28, 2021 passed by the Minister restoring the Mutation Entry 829 filed the present Writ Petition before the High Court (HC).

Issues at hand?

- Does an individual have the right to succeed to the estate of the deceased by reason of two Wills being propounded and the mutation entry in favor of one party is permitted to be retained on record pending the adjudication by the Civil Court on the aspect of the validity of the Will of the deceased?

Arguments of the Parties

- The Advocate appearing on behalf of the Petitioner argued that the Minister's decision to restore the Mutation Entry No. 829 was premature, as the validity of the Will was yet to be determined by

[10] 2023 SCC OnLine Ker 4206

the Civil Court. It was further contended that without the Civil Court's decision crystallizing the rights under the Will, the Mutation Entry in favor of Respondent No. 1 could not be certified. The Advocate for the Petitioner further brought to the attention of the HC that the Respondent No. 1 had filed an application for probate but withdrew it unconditionally on February 5, 2023. Thus, without the probate, Respondent No. 1 cannot claim any rights to the subject property.

- The Advocate on behalf of the Petitioner further pointed out that the Respondent No. 1 has entered into an agreement with a third party for the assignment of mining rights based on the mutation entry, effectively exercising ownership rights prematurely. The Advocate while placing reliance on various judgements ***Jitendra Singh v. State of Madhya Pradesh & Ors.***[11] which asserts that rights claimed under a Will must first be validated by a civil court before any mutation entries can be made and Madhya Pradesh High Court's decision in Writ Petition No. 2301 of 2024 which held that which acting on an unproven Will bypasses the Evidence Act, and the Will's authenticity must be established by the Civil Court. The Advocate for the Petitioners prayed that the mutation entry should be held in abeyance until the Civil Court adjudicates the Will's validity.
- The Advocate representing Respondent No. 3, a third-party intervener, submitted that Respondent No. 3's rights are affected by the certification of the mutation entry. The Advocate on behalf of the Respondent No. 3 further asserted that Respondent No. 3 had a compromise decree with the deceased, Pralhad Desai, now under execution regarding the suit properties. It was argued that pending the adjudication, the mutation entry should have been cancelled to protect Respondent No. 3's interests.
- Furthermore, The Advocate for Respondent No. 1, questions the standing (locus) of Respondent No. 3 in the current proceedings, arguing that Respondent No. 3 was not a party before the Revenue Authorities and his rights can be addressed in the execution proceedings. It was further contended that the Application for mutation was appropriately made to the Revenue Authorities under Sections 149 and 150 of the Maharashtra Land Revenue Code (MLRC) based on the Will in favor of Respondent No. 1. It was emphasized that the mutation entry was certified following the prescribed procedure, and the challenge to this entry was raised nearly 2 years later.
- The Advocate for the Respondent No. 1 argued that the core issue is the validity of the Will, which is being addressed in ongoing civil proceedings. The probate application was withdrawn because the Will's validity was challenged. Accusations were made on the petitioner for suppressing information about the Civil Suit in their Application to the Sub-Divisional Officer. It was asserted that Minister correctly ruled that the validity of the Will, being under challenge, is subject to the Civil Court's outcome. It was further brought to the attention of the HC that no Application has been made by the Petitioner to mutate the property in their name, and the property cannot remain in the name of a deceased person indefinitely. The Advocate on behalf of the Respondent No. 1 placed reliance on the Supreme Court's decision in ***Balwant Singh & Anr v. Daulat Singh (Dead) By L. Rs***[12], highlighting that mutation entries do not create or extinguish title but facilitate land revenue administration.
- In Rejoinder to the arguments made by Respondent No. 1's Advocate, the Advocate on behalf of the Petitioners submitted that the mutation entry was certified without notice to the Petitioner, which violates the procedural norms. It was brought to the attention of the HC that the deceased died on March 29, 2017, placing the burden on Respondent No. 1 to establish the Will's validity before approaching the Revenue Authorities. While referring to Section 157 of the MLRC, which presumes the correctness of entries in revenue records, arguing that Respondent No. 1 has been transacting with the land based on the disputed mutation entry. It was also claimed that there is evidence that no notice was issued, and the required procedure was not followed.

Decision of the Court

- The HC while placing reliance on Sections 149 and 150 of MLRC which specifically outlines the procedure for mutating names in the Record of Rights. This includes reporting the acquisition of rights to the Talathi within 3 months, who then enters the information in the register of mutations and notifies the concerned parties. If objections are raised, they are recorded in a register of disputed cases and resolved before the final certification.
- The HC while taking note of the arguments made by both the parties noted that the prescribed procedure was not followed, and no notice was issued. However, it was observed by the HC that no evidence was presented to substantiate these claims either before the Revenue Authorities or in the Court.
- The HC clarified that the Revenue Authorities do not have the jurisdiction to adjudicate disputed ownership rights, which falls under the domain of Civil Courts. Revenue Records are primarily for fiscal purposes and do not confer title. It was further observed that despite the Revenue Records

HSA
Viewpoint

The HC has rightly observed that when there is a serious dispute arising over the title and the presence of conflicting Wills, the appropriate action in this scenario would be to keep the Mutation Entry in abeyance until the ownership issue is resolved by the competent Civil Court. We are of the opinion that the HC judgment has been the need of the hour to clarify the position with regards to Mutation Entries and has shed light that the Mutation Entries in the Revenue Records are for fiscal purposes only and do not confer any title in favor of any person. The HC also reiterated that the Revenue Authorities are not conferred with the power to adjudicate the disputed rights of the parties to the property which is within the domain of the Civil Courts.

[11] 2021 SCC OnLine SC 852
[12] 1997 (7) SCC 137

not conferring title, the certification of mutation entries is linked to ownership issues, serving as corroborative evidence.

- The HC noted that the controversy in this case arises from conflicting claims based on two Wills, and a pending civil dispute over these Wills.
- The HC while noting the chronology of events transpired in the present case noted that the Sub-Divisional Officer and Additional Collector cancelled the Mutation Entry No. 829, citing the pending civil dispute. Conversely, the Divisional Commissioner and the Minister upheld the certification of the mutation entry, pending the final decision by the Civil Court.
- The HC held that given the serious dispute arising over the title and the presence of conflicting Wills, the appropriate action in this scenario would be to keep the Mutation Entry No. 829 in abeyance until the ownership issue is resolved by the competent Civil Court. The HC further observed that there is no provision in the MLRC that prohibits keeping a Mutation Entry in abeyance during such disputes.
- The HC while quashing and setting aside the orders of the Sub-Divisional Officer, Additional Collector, Divisional Commissioner, and the Minister regarding Mutation Entry No. 829 held that the Mutation Entry 829 is to remain in abeyance until the Civil Court adjudicates the ownership issue.

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