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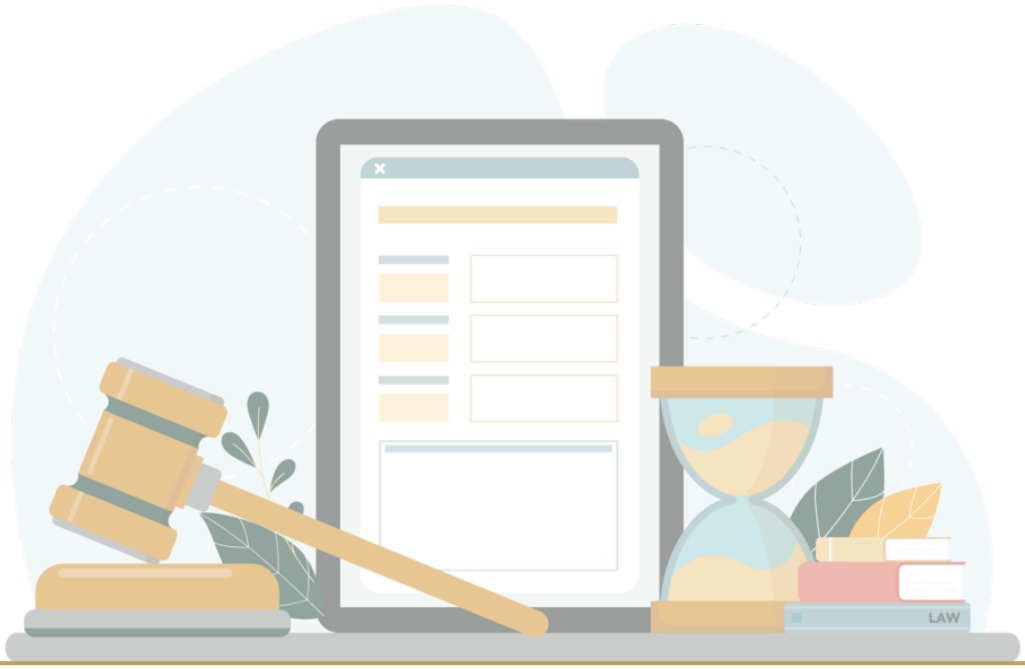
LAW OFFICES INDIA

DISPUTE RESOLUTION

Newsletter - December 2025



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INSIDE

1. Supreme Court rules that High Courts have no power to review or recall arbitrator appointments under Section 11(6).

The Hon'ble Supreme Court in *Hindustan Construction Company Ltd. v. Bihar Rajya Pul Nirman Nigam Ltd.*[1] clarified the scope of powers vested with High Courts' under Section 11(6) of the Arbitration and Conciliation Act, 1996 ("**A&C Act**"), holding that a High Court cannot review or reopen an order appointing an arbitrator once such appointment has been made. The Court observed that the A&C Act is a self-contained code and Section 5 expressly restricts judicial intervention, allowing courts to act only where the Act specifically provides for it. Since the Act does not confer any power to review, therefore an order appointing an arbitrator under Section 11 of the A&C Act makes a High Court became *functus officio* after making the appointment.

The Court noted that although the order of a High Court under Section 11 of the A&C Act is a judicial order, it has a narrow and facilitative role limited to a prima facie examination of the existence of a valid and binding arbitration agreement. Thereby once a High Court has passed an order under Section 11 of the A&C Act, the remedy would be to approach the Supreme Court under Article 136 of the Constitution of India or raise all objections regarding validity, enforceability, or jurisdiction must be raised before the arbitral tribunal under Section 16 of the A&C Act. The Hon'ble Supreme Court stated that allowing the High Court to review its earlier order would undermine the principle of minimum judicial interference and run contrary to the statutory mandate that arbitration proceed without unnecessary court intervention.

The Hon'ble Supreme Court held that even if maintainable, a review is permissible only to correct a clear procedural error or an error apparent on the face of the record but the same cannot be used to revisit legal findings or reopen issues already decided. In this case, the review petition having been filed with an unexplained delay of nearly three years, disclosed no procedural defect, and was inconsistent with the parties' participation in the arbitration proceedings after several years. Therefore, the Hon'ble Court held that the High Court's review order was without jurisdiction and invalid in law and set it aside.

2. Supreme Court clarifies jurisdiction under section 142(2) of the NI Act for cheque dishonour cases.

The Supreme Court in *Jai Balaji Industries Ltd. and Ors. vs M/S Heg Ltd.* [2] clarified the scope of Section 142(2) of the Negotiable Instruments Act, 1881 ("**NI Act**"), holding that Parliament, through the 2015 Amendment, has mandated that the jurisdiction to try a complaint filed under Section 138 in respect of a cheque delivered for collection through an account, i.e., an account payee cheque, is vested in the court within whose local jurisdiction the branch of the bank in which the payee maintains the account, i.e., the payee's home branch, is situated. . Thereby, the Hon'ble Supreme Court noted that Section 142(2) of the NI Act was enacted to remove the uncertainty created by earlier decisions, where conflicting or incongruent opinions had produced a wide and shifting understanding of territorial jurisdiction. The Court observed that Section 142(2) of the NI Act is the governing provision and that courts must strictly apply the section depending on whether the cheque is delivered for collection through an account or presented

[1] *Hindustan Construction Company Ltd. v. Bihar Rajya Pul Nirman Nigam Ltd, 2025 INSC 1365*
[2] *Jai Balaji Industries Ltd. v. HEG Ltd., 2025 SCC OnLine SC 2581*

for payment otherwise through an account.

The Court held that under Section 142(2)(a) of the NI Act, when a cheque is delivered for collection through an account, jurisdiction lies only where the branch of the bank where the payee maintains the account is situated. The Explanation deems delivery at the home branch irrespective of the branch at which the cheque is actually deposited, thereby preventing forum shopping and ensuring uniformity. Under Section 142(2)(b) of the NI Act, when the cheque is presented otherwise than through an account, jurisdiction lies where the drawee bank branch where the drawer maintains the account is located. The Court explained that the statutory language of "*shall be inquired into and tried*" makes the rule mandatory, and earlier case law based on multiple territorial factors no longer applies.

The Court further held that jurisdiction cannot be conferred on a court merely because the complainant issues a demand notice from a particular place or because the accused resides there, as such factors are irrelevant after the statutory amendment. The Court stressed that the Amendment Act, 2015 restores certainty by creating a single forum based on the banking branch identified in Section 142(2) of the NI Act, and that complaints shall not be filed in courts lacking such territorial nexus must.

3. Supreme Court recalls *Vanashakti* and holds that ex post facto environmental clearances are legally permissible in limited cases.

The Hon'ble Supreme Court in *Confederation of Real Estate Developers of India v Vanashakti*[3] reviewed and recalled its earlier judgment in *Vanashakti v Union of India*[4] ***("Vana Shakti Judgment")***. The Court held that Vanashakti was not correct to strike down the 2017 Notification and the 2021 Office Memorandum which allowed *ex post facto* approvals, and agreed with earlier observations of the Hon'ble Supreme Court in *Bindu Kapurea* v. *Subhashish Panda*. It noted that earlier decisions had recognised that although prior environmental clearance is the rule, the Environment (Protection) Act, 1986 does not impose an absolute bar on granting ex post facto clearance in exceptional situations. The Review Bench held that Vanashakti overlooked operative parts of these judgments which permitted regularisation, and this amounted to an error apparent on the face of the record.

The Court reasoned that judicial discipline requires a bench to either follow or refer to a larger bench any coordinate bench judgment that adopts a different interpretation. Since earlier judgments had upheld the legality of the 2017 Notification and the 2021 Office Memorandum and had affirmed that ex post facto clearance was legally permissible, Vanashakti could not have invalidated them without first referring the matter to a larger bench. The Court also clarified that an undertaking recorded before the High Court regarding a one-time relaxation did not prevent the competent authority from issuing subsequent modifications in exercise of statutory power.

The Court also held that ex post facto environmental clearance may be granted in limited and exceptional circumstances, subject to environmental safeguards, proportionality and remedial measures such as

[3] *Confederation of Real Estate Developers of India (CREDAI) v. Vanashakti, 2025 SCC OnLine SC 2474*
[4] *Vanashakti v. Union of India, 2025 SCC OnLine SC 1139*

penalties. It restored the validity of the 2017 Notification and the 2021 Office Memorandum and replaced the strict view taken in Vanashakti with a position that allows regulatory authorities to address violations through conditional approval rather than an automatic prohibition.

4. Supreme Court holds that commercially agreed high interest rates are not against public policy under the Arbitration Act.

The Supreme Court in *Sri Lakshmi Hotel Pvt Ltd v Shriram City Union Finance Ltd*[5] considered whether an interest rate of 24 per cent agreed in a commercial loan transaction could be treated as contrary to public policy so as to warrant interference with an arbitral award under Section 34 of theA&C Act. The Court examined the statutory framework of the A&C Act and held that public policy has a restricted meaning after the 2015 amendments and applies only when an award violates the fundamental policy of Indian law or basic notions of morality or justice. The Court observed that the charging of a high interest rate, in the context of a commercial agreement voluntarily executed between parties, does not by itself fall within these narrow grounds.

The Court noted that several judgments passed by the Supreme Court on public policy, emphasize that public policy is an exceptional ground and cannot be expanded to cover every dispute about terms of a contract. The Court held that a mere allegation that an interest rate is excessive or exploitative cannot amount to a breach of fundamental policy of Indian law unless the rate is so unreasonable or shocking that it undermines the administration of justice. On the facts, the Court found that the interest rate reflected commercial risk and contractual autonomy and was not shown to be unconscionable under the limited standard applicable in proceedings under Section 34 of the Arbitration Act.

The Hon'ble Court further held that neither the Usurious Loans Act, 1918 nor State statutes on exorbitant interest apply to non-banking financial companies regulated under the Reserve Bank of India Act. It reaffirmed that arbitrators have discretion to award interest under Section 31(7) of the Arbitration Act and that courts cannot reappreciate evidence or revisit contractual terms while exercising limited jurisdiction under Sections 34 and 37 of the Arbitration Act.

5. Supreme Court holds that rejection of a plaint is a decree and is appealable under Section 13(1A) of the Commercial Courts Act.

The Hon'ble Supreme Court in *MITC Rolling Mills Pvt Ltd v Renuka Realtor*[6]*s* examined whether an order rejecting a plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 ("**CPC**") can be appealed under Section 13(1A) of the Commercial Courts Act, 2015 ("**Commercial Courts Act**"). The Court noted that rejection of a plaint is expressly included within the definition of a decree under Section 2(2) CPC because it conclusively determines the rights of the parties and finally disposes of the suit. Since Section 13(1A) of the Commercial Courts Act provides a right of appeal against judgments and decrees of Commercial Courts, an order rejecting the plaint falls within the main provision permitting an appeal.

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[5] *Sri Lakshmi Hotel Pvt Ltd v Shriram City Union Finance Ltd, 2025 INSC 1327, Civil Appeal no. 13785 of 2025*
[6] *MITC Rolling Mills Private Limited v. Renuka Realtors, 2025 SCC OnLine SC 2375*

The Court explained that Section 13(1A) of the Commercial Courts Act has two parts. The main part allows appeals against judgments and orders of Commercial Courts exercising original civil jurisdiction. The proviso operates only in respect of interlocutory orders and restricts appeals in that category to those specifically enumerated in Order XLIII of CPC or under Section 37 of the Arbitration and Conciliation Act. The statutory scheme therefore distinguishes between interlocutory orders, which are subject to the proviso, and decrees, which fall within the main part of Section 13(1A) of the Commercial Courts Act.

The Court also clarified the distinction between an order rejecting an application under Order VII Rule 11of CPC and an order rejecting the plaint itself. An order rejecting an application is not enumerated in Order XLIII and therefore does not qualify for appeal under the proviso. However, when the plaint is actually rejected, it results in a decree and is appealable under Section 13(1A) of the Commercial Courts Act. The Court held that a plaintiff aggrieved by rejection of the plaint must have access to the appellate remedy and accordingly restored the appeal for consideration on merits.

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