LEGAL UPDATE

ARBIVIS PARTNERS LLP LAW OFFICES

SUPREME COURT LAYS DOWN 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

The Hon'ble Supreme Court in the case of *Home Care Retail Marts Pvt. Ltd. vs. Haresh N. Sanghavi* (2026 INSC 415) has resolved an important conflict among decisions of various High Courts pertaining to whether an unsuccessful party in arbitration can invoke Section 9 of the Arbitration and Conciliation Act, 1996 after the award has been passed but prior to enforcement. The interpretation of the term 'party' was of significance in this case. The High Courts of Bombay, Delhi, Madras and Karnataka had held that, post rendering of an award, relief available under Section 9 protects the fruits of the award and is therefore not available to the losing party. However, the High Courts of Telangana, Gujarat and Punjab and Haryana had taken the contrary view.

The Supreme Court adopted a plain-text interpretation in undertaking its analysis. It held that Section 9 refers to 'a party' in an arbitration agreement and does not distinguish between successful and unsuccessful parties. The Court laid down that to assign a different meaning to the same expression, namely 'a party', in the context of interim measures sought after the arbitral award has been rendered but prior to its enforcement, would result in an anomalous situation. Such an approach would imply that before the award is delivered, the term 'a party' encompasses all parties to the arbitration agreement, whereas after the award, the same expression would acquire a narrower connotation, referring only to the successful party in the arbitration. The Court laid down that the statutory framework does not prescribe any qualification that would confine the availability of post-award relief under Section 9 solely to award-holders.

The Supreme Court further clarified that Sections 34, 36 and 9 of the Arbitration and Conciliation Act, 1996 operate in distinct fields. Section 34 challenges the award. Section 36 pertains to the enforcement of the award or stay. Section 9 protects the subject matter or amount in dispute. The mere availability of recourse under Section 34 of the Act or of a stay under Section 36(2) of the Act cannot operate as a bar to seeking protection under Section 9. However, the grant of interim relief under Section 9 of the Act will continue to be guided by well-established principles, namely, the existence of a prima facie case, balance of convenience, and likelihood of irreparable harm or injury.

2026 INSC 415

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2026
(Arising out of SLP (C) NO. 29972/2015)

HOME CARE RETAIL MARTS PVT. LTD. ..... APPELLANT

VERSUS

HARESH N. SANGHAVI .....RESPONDENT

WITH

CIVIL APPEAL NO. OF 2026
(Arising out of SLP (C) NO. 26876/2014)
AND
CIVIL APPEAL NO. OF 2026
(Arising out of SLP (C) NO. 11139/2020)

J U D G M E N T

MANMOHAN, J.

1. Leave granted.

SUBSTANTIAL QUESTION OF LAW

2. The substantial question of law that arises for consideration in the present batch of appeals is whether a petition under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') at the post-award stage, by a party that has lost in the arbitral proceedings and has no enforceable award in its favour, is maintainable in law?

CONFLICTING JUDGMENTS OF DIFFERENT HIGH COURTS

3. While Bombay High Court (***Dirk India Pvt. Ltd. vs. Maharashtra State Electricity Generation Co. Ltd., 2013 SCC OnLine Bom 481***), Delhi High Court (***Nussli Switzerland Ltd. vs. Organizing Committee Commonwealth Games, 2010, 2014 SCC OnLine Del 4834*** as well as ***National Highways Authority of India vs. Punjab National Bank and Anr., 2023 SCC OnLine Del 4810***), Madras High Court (***A. Chidambaram vs. S. Rajagopal and Ors., OA No. 843 of 2024***) and Karnataka High Court (***Smt. Padma Mahadev & Ors. vs. M/s. Sierra Constructions Private Limited, COMAP No. 2 of 2021, dated 22nd March 2021***) have held that a party unsuccessful in arbitral proceedings cannot maintain a petition under Section 9 of the Act, Telangana High Court [***M/s Saptarishi Hotels Pvt. Ltd & Anr. vs. National Institute of Tourism & Hospitality Management (NITHM), 2019 SCC OnLine TS 1765***], Gujarat High Court [***GAIL (India) Ltd. vs. Latin Rasayani Pvt. Ltd., 2014 SCC OnLine Guj 14836***] and Punjab & Haryana High Court [***M/s DLF Home Developers Ltd. vs. M/s Orris Infrastructure Pvt. Ltd. & Ors., FAO-CARB-51-2024 (O&M), dated 21st February, 2025***] have taken a contrary view and held that a party unsuccessful in arbitral proceedings can maintain a petition under Section 9 of the Act.

ARGUMENTS ON BEHALF OF MR. K.M. NATARAJ, ASG AND MR. ABHIMANYU BHANDARI, SR. ADV.

4. Mr. K.M. Nataraj, learned Additional Solicitor General and Mr. Abhimanyu Bhandari, learned senior counsel, submitted that the Bombay

High Court by the impugned order in SLP (C) No. 29972 of 2015 dismissed the appeals filed under Section 37 of the Act by placing reliance upon its earlier judgment in ***Dirk India*** (supra). They submitted that in ***Dirk India*** (supra), the Bombay High Court held that a party unsuccessful in arbitral proceedings cannot maintain a petition under Section 9 of the Act. According to them, the Court reasoned that the purpose of interim measures under Section 9 of the Act, post-award, is confined to protecting the '*fruits of arbitral proceedings*', since under Section 34 of the Act, the Court may either set aside or uphold the award but cannot reverse the findings of the arbitral tribunal. Consequently, as an unsuccessful party is not entitled to any '*fruits of arbitral award*', it cannot seek interim relief under Section 9 of the Act.

5. They, however, contended that the judgment in ***Dirk India*** (supra) does not lay down good law. According to them, the decision failed to consider that if the Court ultimately sets aside the award under Section 34 of the Act, the underlying contract between the parties and their rights thereunder are revived. In such a situation, the so-called losing party would be entitled to enforce or protect its contractual rights *de novo*, necessitating recourse to fresh arbitration. They argued that the interpretation adopted in ***Dirk India*** (supra) leaves such a party entirely remediless.

6. They further submitted that Section 43(4) of the Act preserves the right of parties to pursue arbitration by excluding the time spent in earlier proceedings, thereby ensuring that parties may re-initiate arbitration and reassert their

contractual rights. They contended that when the statute itself preserves the right of an unsuccessful party to re-agitate disputes, such a party must also be entitled to seek protection of the subject matter of the dispute by invoking Section 9 of the Act.

7. Learned ASG and learned senior counsel emphasised that the Arbitration and Conciliation (Amendment) Act, 2019 significantly altered the legal regime by clarifying that arbitral tribunals cease to have jurisdiction to grant interim measures post-award.

8. They submitted that this Court in ***Gayatri Balasamy vs. ISG Novasoft Technologies Limited, 2025 SCC OnLine SC 986*** has recently held that modification of an award is permissible in limited circumstances by sustaining it in relation to severable parts and setting aside the remainder. Therefore, according to them, the fundamental premise of ***Dirk India*** (supra) that the Court can only uphold or set aside an award stands vitiated.

9. They emphasised that once the Court, exercising jurisdiction under Section 34 of the Act, can modify an award, a party whose claim was rejected in arbitration cannot be left remediless during the pendency of the petition under Section 34 of the Act.

10. They also relied upon the judgments of the Gujarat High Court in ***GAIL*** (supra) and the Telangana High Court in ***M/s Saptarishi Hotels Pvt. Ltd. & Anr.*** (supra), which hold that interim measures are available to all parties who

demonstrate a bona fide apprehension of injury or dissipation of the subject matter pending Section 34 proceedings.

11. They repeatedly stated that Section 9 of the Act uses the expression '*party*' which is defined in Section 2(h) of the Act. They relied upon the decision of this Court in ***Firm Ashok Traders and Anr. vs. Gurumukh Das Saluja and Ors., (2004) 3 SCC 155***, wherein the term '*party*' was interpreted in the following terms:

> *""Party" is defined in clause (h) of sub-section (1) of Section 2 of the A&C Act to mean "a party to an arbitration agreement". So, the right conferred by Section 9 is on a party to an arbitration agreement. The time or the stage for invoking the jurisdiction of court under Section 9 can be: (i) before, or (ii) during arbitral proceedings, or (iii) at any time after the making of the arbitral award but before it is enforced in accordance with Section 36.…For the moment suffice it to say that the right conferred by Section 9 cannot be said to be one arising out of a contract. The qualification which the person invoking jurisdiction of the court under Section 9 must possess is of being a "party" to an arbitration agreement. A person not party to an arbitration agreement cannot enter the court for protection under Section 9. This has relevance only to his locus standi as an applicant....."*

12. They stated that in provisions such as Section 8 (reference to arbitration), Section 11(4), (5), and (6) (appointment of arbitrators), Section 12(4) and 13(5) (challenge procedure), Section 16(6) (jurisdictional objections), and Section 34 (setting aside of awards), the legislature has expressly specified the circumstances in which a particular party may invoke the provision. In contrast, no such limitation is prescribed in Section 9 of the Act.

13. They highlighted that the scope of interim measures under Section 9 of the Act is considerably broader than the limited relief of stay contemplated under Section 36 of the Act. They submitted that while Section 36 is confined to questions of enforceability and the conditions for stay of enforcement, Section 9 empowers the Court to grant such measures as it may deem just and convenient. According to them, where the Court grants a stay of enforcement under Section 36 of the Act upon being satisfied that the unsuccessful party has established a *prima facie* case on grounds such as fraud or patent illegality, it becomes essential to preserve that party's rights through interim protection under Section 9 during the pendency of proceedings under Section 34 of the Act.

14. They further pointed out that in ***Wind World (India) Ltd. vs. Enercon GmbH and Ors., 2017 SCC OnLine Bom 1147***, the interim relief sought by the unsuccessful party under Section 9 of the Act was merely the continuation of confidentiality of certain documents during the pendency of its Section 34 application. Nevertheless, the Bombay High Court, relying upon ***Dirk India*** (supra), dismissed the application, despite the fact that the relief sought did not in any manner prejudice or impede the rights of the successful party in respect of the subject matter of the dispute.

PER CONTRA, ARGUMENTS ON BEHALF OF DR. MENAKA GURUSWAMY

15. *Per contra*, Dr. Menaka Guruswamy, learned senior counsel, contended that arbitral process is a consensual mechanism of dispute resolution, culminating in a final and binding arbitral award, which is subject only to the limited grounds

of challenge envisaged under Section 34 of the Act. She submitted that although Section 9 of the Act empowers the Court to grant interim measures at three distinct stages, yet the said provision cannot be construed so as to dilute or undermine the finality attaching to an arbitral award.

16. According to her, prior to the conclusion of arbitral proceedings, the parties stand on an equal footing and may independently seek to establish a *prima facie* case for interim relief under Section 9 of the Act. However, once an arbitral award has been rendered, the claims and counterclaims of the parties stand conclusively adjudicated. At that stage, it is the successful party alone that is in a position to demonstrate a *prima facie* entitlement to interim measures under Section 9 of the Act. It is, therefore, only such a party that can legitimately invoke Section 9 of the Act at the post-award stage to seek interim measures of protection, with a view to securing the fruits of the award. Conversely, a party against whom no enforceable award exists, and which consequently has '*no fruits of award to preserve*', cannot maintain a petition under Section 9 of the Act for interim relief. In support of her submissions, reliance was placed upon the judgment of the Bombay High Court in ***Dirk India*** (supra)**,** wherein the Court has held as under:

> *"14. ....Section 9(ii) is intended to protect through the measure, the fruits of a successful conclusion of the arbitral proceedings. A party whose claim has been rejected in the course of the arbitral proceedings cannot obviously have an arbitral award enforced in accordance with Section 36...."*

17. Therefore, according to her, Section 9 operates distinctly at different stages of the arbitral process. At the post-award stage, its function is confined to securing the fruits of the award and facilitating its enforcement.

18. She further submitted that this Court, in ***Hindustan Construction Co. Ltd. and Anr. vs. Union of India and Ors., (2020) 17 SCC 324,*** has affirmed the decision of the Bombay High Court in ***Dirk India*** (supra), wherein this Court observed as under:

> *"36. Interpreting Section 9 of the Arbitration Act, 1996, a Division Bench of the Bombay High Court in Dirk (India) (P) Ltd. v. Maharashtra State Power Generation Co. Ltd. [Dirk (India) (P) Ltd. v. Maharashtra State Power Generation Co. Ltd., 2013 SCC OnLine Bom 481 : (2013) 7 Bom CR 493] held that: (SCC OnLine Bom para 13)*
>
> > *"13. ... The second facet of Section 9 is the proximate nexus between the orders that are sought and the arbitral proceedings. When an interim measure of protection is sought before or during arbitral proceedings, such a measure is a step in aid to the fruition of the arbitral proceedings. When sought after an arbitral award is made but before it is enforced, the measure of protection is intended to safeguard the fruit of the proceedings until the eventual enforcement of the award. Here again the measure of protection is a step in aid of enforcement. It is intended to ensure that enforcement of the award results in a realisable claim and that the award is not rendered illusory by dealings that would put the subject of the award beyond the pale of enforcement."*
>
> *37. This being the legislative intent, the observation in Nalco [National Aluminium Co. Ltd. v. Pressteel & Fabrications (P) Ltd., (2004) 1 SCC 540] that once a Section 34 application is filed, "there is no discretion left with the Court to pass any interlocutory order in regard to the said award..." flies in the face of the opening words of Section 9 of the Arbitration Act, 1996, extracted above."*

19. She also relied upon the judgment of the Madras High Court in ***A. Chidambaram*** (supra), wherein it has been held that interim relief under Section 9 of the Act cannot be sought by an unsuccessful party, which would include a claimant whose claims in arbitral proceedings have been dismissed simpliciter.

20. She submitted that once an award has been rendered, the only remedy available to the losing party is to challenge the award under Section 34 of the Act and, if necessary, to seek a stay of its operation under Section 36(2), by demonstrating a prima facie case that the award is vulnerable on the grounds specified in Section 34 and the proviso to Section 36(3) of the Act.

21. According to her, the nature of *prima facie* satisfaction required under Sections 34 and 36 of the Act is fundamentally distinct from that contemplated under Section 9 of the Act. She submitted that Section 36(3) of the Act empowers the Court to stay the operation of an arbitral award subject to such conditions as the Court may deem fit, thereby enabling a balancing of equities appropriate to the post-award stage. In contrast, she argued that Section 9 of the Act contains no comparable safeguards to regulate interim relief at the post-award stage or to prevent its misuse by an unsuccessful party. She pointed out that a counter-claimant who does not have an enforceable award in its favour may nevertheless secure the disputed amount by satisfying the Court under Section 36 to impose conditions that balance equities and protect its interest. Thus, permitting a counter-claimant, whose claims have been rejected by the arbitral tribunal, to circumvent the statutory scheme by obtaining security under Section 9 of the Act

would undermine the discipline of the Act and effectively confer a relief greater than that contemplated under Section 34, which is limited to setting aside the award.

22. She highlighted that the Act is designed to ensure speedy resolution of disputes with minimal judicial intervention. This legislative intent is reflected in Section 5 of the Act, which expressly bars judicial intervention, except where provided under the statute. She submitted that allowing Section 9 relief to an unsuccessful party at the post-award stage would tantamount to opening a pandora's box, particularly since orders under Section 9 are appealable under Section 37 of the Act, unlike orders passed under Section 36[1]. Such an interpretation, she emphasised, would invite multiplicity of proceedings and erode the finality envisaged by the Act.

23. She further submitted that Section 9 of the Act must not be construed merely on the basis of its literal wording, but in the context of the statute as a whole and the scheme within which it operates. In this regard, she relied upon the judgment of the Delhi High Court in ***Nussli Switzerland Ltd.*** (supra), wherein, relying on ***State of West Bengal v. Union of India, AIR 1963 SC 1241***, the Court interpreted the expression "party" under Section 9 in the following terms:

> *"18. A plain textual reading of the above indicates that at any stage of the proceedings, before, during or after the making of the arbitral award (but before it is executed) a party to an arbitration agreement may approach the Court seeking interim measures. The word '**but**' can either be a conjunction or a proposition or a noun or an adverb. In the textual setting in which the word '**but**' finds itself in the section, it is obviously not used as a noun or an*

[1] *Kakade Construction Co Ltd v. Vistra ITCL (India) Ldi, 2019 SC OnLine Bom 1521 Para 32*

*adverb. Whether the word '**but**' is read as a conjunction or proposition would make no difference because if read as a conjunction, the section would read : 'A party may, before or during arbitral proceedings or at any time after the making of the arbitral award **and not** before it is enforced' and if read as a proposition, the section would read : A party may, before or during arbitral proceedings or at any time after the making of the arbitral award **except** before it is enforced'.*

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25. ……a Court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs."

24. She pointed out that one of us (Manmohan, J) as a Judge of the Delhi High Court in ***National Highways Authority of India*** (supra) has relied upon the Judgment of ***Dirk India*** and ***Nussli Switzerland Ltd.*** (supra) to dismiss an appeal under Section 37 of the Act.

25. She additionally placed reliance upon the judgment of the Madras High Court in ***A. Chidambaram*** (supra), wherein, while interpreting the expression "party" under Section 9 of the Act, the Court observed as under:

"25. [..] Section 9 opens with 'a party may'. However, the reference to 'a party' shall have to be applied in the context of the three scenarios under which the application under Section 9 can be maintained seeking interim measures from this Court…."

26. Thus, according to her, Section 9 of the Act contains the term '*a party'* instead of a *'successful party'* because it envisions interim relief for all three stages of arbitration and not just for the post-award stage where a party may be segregated into a successful or an unsuccessful party. However, this cannot be construed to mean that an unsuccessful party, having no enforceable award in its favour, may seek interim relief under Section 9 of the Act at the post-award stage.

27. She lastly submitted that an unsuccessful party may seek interim protection only within the narrowly circumscribed framework of Section 36, which is consistent with the sanctity of arbitral proceedings and the principle of minimal judicial interference. To permit such a party to bypass this statutory discipline by invoking Section 9 would defeat the safeguards expressly incorporated under Section 36(3), render them nugatory, and result in an incoherent interpretation of the statutory scheme.

REASONING

MEANING OF THE TERM 'A PARTY' CANNOT BE CONTEXTUALLY MODULATED OR VARIED DEPNDING UPON THE OUTCOME OF THE ARBITRAL PROCEEDINGS

28. It is a settled principle of statutory interpretation that where the words of a statute are clear, plain, and unambiguous, the Court is bound to construe them in their natural, ordinary, and grammatical sense, giving effect to the legislative intent without resort to any interpretative embellishment[2]. In ***R. v. Oakes, [1959] 2 Q.B. 350,*** Lord Parker C.J. said, "*Where the literal reading of a statute… produces an intelligible result… there is no ground for reading in words or changing words according to what may be the supposed intention of Parliament.*"

[2] In ***R.S. Nayak v. A.R. Antulay, AIR 1984 SC 684***, the Supreme Court held, "*Where the language of a statute is clear and unambiguous, the Court has to give effect to the plain meaning of the words used therein; it is not for the Court to add or subtract words.*" Further, in ***Grasim Industries Ltd. v. Collector of Customs, Bombay, (2002) 4 SCC 297***, the Supreme Court held, "*The intention of the legislature is primarily to be gathered from the language used. When the language is plain and unambiguous, it is not open to add words to a statute on the basis of presumed intention.*"

29. Section 9 of the Act commences with the expression '*a party'*, which, by virtue of Section 2(h) of the Act, is defined as '*a party to an arbitration agreement'*. Neither Section 2(h) nor Section 9 of the Act draws any distinction between a successful and an unsuccessful party in arbitration proceedings.

30. The object of incorporating definitions within a statute is to assign a precise and particular meaning to terms in the context of that enactment. It is only in situations where a term remains undefined in the statute that the Court assumes the duty of ascertaining and delineating its meaning through principles of interpretation.

31. Moreover, to assign a different meaning to the same expression, namely '*a party*', in the context of interim measures sought after the arbitral award has been rendered but prior to its enforcement, would result in an anomalous situation. Such an approach would imply that before the award is delivered, the term '*a party*' encompasses all parties to the arbitration agreement, whereas after the award, the same expression would acquire a narrower connotation, referring only to the successful party in the arbitration. This Court is of the view that the statutory framework does not prescribe any qualification that would confine the availability of post-award relief under Section 9 solely to award-holders.

32. Further, this Court is of the opinion that acceptance of the views expressed in ***Dirk India***, ***Nussli Switzerland Ltd.***, ***Padma Mahadev*** and ***A. Chidambaram*** (supra) would deprive the unsuccessful party of a right expressly conferred by the Act.

33. Consequently, this Court holds that the meaning of the expression '*a party*' cannot be contextually modulated or varied depending upon the outcome of the arbitral proceedings. Such modulation would amount to judicial amendment of the statute, which lies beyond the province of the Court[3].

OBJECT OF SECTION 9 IS TO ENSURE THAT PARTIES HAVE THE RIGHT TO APPROACH THE COURT FOR INTERIM MEASURES TILL THE JUDICIAL PROCESS HAS REACHED ITS CULMINATION.

34. Additionally, Section 9 of the Act expressly permits any party to an arbitration agreement to approach the Court for interim measures at three distinct stages: (i) prior to the commencement of arbitration, (ii) during the pendency of arbitral proceedings, and (iii) after the award has been rendered but before it is enforced in accordance with Section 36 of the Act.

35. On its plain language, the provision does not distinguish between a successful or unsuccessful party. It does not expressly bar a party whose claims have been rejected by the arbitral tribunal from seeking interim reliefs after the award is rendered. A literal interpretation of Section 9 of the Act would indicate that the right to seek interim relief is available to any party to the arbitration before or during arbitral proceedings or at any time after the award is delivered but before it is enforced in accordance with Section 36 of the Act.

[3] According to Craies on Statute Law (Seventh Edition by S.G.G. Edgar), "Even though a Court is satisfied that the legislature did not contemplate the consequences of an enactment, a court is bound to give effect to its clear language". Thus Lord Herschell in ***Cox v. Hakes***, ***(1890) 15 App. Cas. 506, 528*** said: "It is not easy to exaggerate the magnitude of this change…. nevertheless, it must be admitted that, if the language of the legislature, interpreted according to the recognised canons of construction, involves this result, your lordships must frankly yield to it, even if you should be satisfied that it was not in the contemplation of the legislature."

36. Indeed, while construing Section 9 of the Act in ***Sundaram Finance Ltd. vs. NEPC India Ltd., (1999) 2 SCC 479***, this Court categorically, inter alia, held as under:

> "*13.…Reading the section as a whole it appears to us that the court has jurisdiction to entertain an application under Section 9 either before arbitral proceedings or during arbitral proceedings or after the making of the arbitral award but before it is enforced in accordance with Section 36 of the Act.*"

37. It is pertinent to note that the Indian Arbitration and Conciliation Act is modelled upon the framework of the United Nations Commission on International Trade Law (UNCITRAL) Model Law. However, the Indian enactment departs from the Model Law in certain respects. By way of illustration, Article 9 of the UNCITRAL Model Law provides as follows:—

> "*Article 9. Arbitration agreement and interim measures by court*
> *It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure."*

38. The corresponding provision in the Indian Arbitration and Conciliation Act, which is *pari materia* to Article 9 of the UNCITRAL Model Law, reads as follows:—

> *"9. Interim measures, etc., by Court.—[(1)]A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court—….*
> *(e) such other interim measure of protection as may appear to the Court to be just and convenient, and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it…."*

39. From the foregoing, it is evident that the Indian Parliament has consciously conferred an additional right upon parties to seek interim measures after the arbitral award has been rendered but prior to its enforcement. This departure from Article 9 of the UNCITRAL Model law, by introducing a post-award stage during which interim relief may be sought, demonstrates that the legislature deliberately expanded the scope of Section 9 of the Act. Significantly, while doing so, it did not impose any restriction on the category of parties entitled to seek such relief.

40. The interpretation adopted in ***Dirk India*** (supra) appears inconsistent with the statutory scheme. By restricting the availability of post-award interim relief to a successful party, the judgment introduces a limitation unsupported by the language of Section 9 of the Act. If the legislature, while consciously deviating from the UNCITRAL Model Law, intended to impose such a restriction, it would have done so expressly.

41. Consequently, this Court is of the considered view that the object and purpose of Section 9 of the Act is to ensure that parties retain the right to approach the Court for interim measures until the judicial process has reached its culmination.

SECTIONS 34 AS WELL AS 36(2) AND SECTION 9 OPERATE IN DISTINCT SPHERES

42. The mere availability of recourse under Section 34 of the Act or of a stay under Section 36(2) of the Act cannot operate as a bar to seeking protection under Section 9.

43. Sections 34 as well as 36 provide remedies against an award or a stay thereof, whereas Section 9 ensures protection of the subject matter or the amount in dispute. An unsuccessful party cannot secure protection of its claim under Section 34 or Section 36. To deny interim relief under Section 9 would leave such a party remediless. In fact, if the Court declines to entertain an application of a losing party for interim relief, there would be no forum available for protection of the subject matter, even where the award under challenge is stayed and potentially liable to be set aside. Moreover, the ultimate outcome may alter the rights of parties and, therefore, distinction between a '*winning'* and a '*losing*' party cannot govern access to the remedy under Section 9 of the Act.

FUNDAMENTAL ASSUMPTIONS UNDERLYING THE JUDGMENTS IN DIRK INDIA, NUSSLI SWITZERLAND LIMITED, PADMA MAHADEV AND A. CHIDAMBARAM (SUPRA) ARE UNTENABLE IN LAW

44. The fundamental premise on which ***Dirk India***, ***Nussli Switzerland Ltd.***, ***Padma Mahadev*** and ***A. Chidambaram*** (supra) held that an unsuccessful party, post award, is disentitled to seek interim relief is that under Section 34 of the Act, the Court may either dismiss the objection to the arbitral award or set it aside, therefore the interim measure of protection is intended to safeguard the fruit of the proceedings until the eventual enforcement of the award.

45. This assumption is untenable in law, for it now stands conclusively settled by the Constitution Bench Judgment in ***Gayatri Balasamy*** (supra) that Courts exercising jurisdiction under Sections 34 and 37 of the Act possess the power to

modify an arbitral award where the award is severable, by excising the invalid portion from the valid portion, and/or by correcting clerical, computational, or typographical errors, and/or by modifying post-award interest in appropriate circumstances. It has also been held that this Court, in exercise of its powers under Article 142 of the Constitution, has the authority to amend the award.

46. Besides, Courts may quash an award, thereby leaving the parties free to recommence arbitration *de novo*, should they so choose. It is also pertinent to note that Section 43(4) of the Act stipulates that the period between the commencement of arbitration and the date of the Court's order shall be excluded in computing the limitation prescribed under the Limitation Act, 1963 for the initiation of proceedings, including arbitration, in respect of the dispute submitted.

47. Additionally, the expressions '*subject matter of arbitration'* and '*amount in dispute'* used in Section 9(1)(ii) of the Act are broader in scope, width and amplitude than the phrase '*fruits of arbitration*'. Where the Legislature has expressly provided that measures under Section 9 of the Act may secure the subject matter of arbitration or the amount in dispute, the Court in ***Dirk India***, ***Nussli Switzerland Ltd., Padma Mahadev*** and ***A. Chidambaram*** (supra) could not have restricted its ambit to securing an enforceable claim of the successful party. Such a restrictive interpretation is impermissible when the language of the provision is plain and categorical.

48. It is noteworthy that under Section 18 of the Arbitration Act, 1940, the grant of interim measures was expressly confined to the successful party and directed solely towards ensuring enforcement of the award. In contrast, under the Act, the Legislature, in its wisdom, has imposed no such restriction or qualification upon the Court under Section 9 of the Act. Consequently, the legislative intent is manifest.

EVEN IF PURPOSIVE INTERPRETATION IS APPLIED, THE EXPRESSION 'A PARTY' MEANS ANY PARTY TO THE ARBITRATION AGREEMENT

49. Even applying the test of purposive interpretation, '*a party*' must mean any party to the arbitration agreement. This Court can envisage situations where a party that has lost in arbitration may nonetheless require interim protection. For instance, where an arbitral award has been rendered without proper notice to a party, or where a party is able to *prima facie* demonstrate that the award has been induced or tainted by fraud or corruption. In such situations, the Court may not only stay the award but also grant interim measures under Section 9 of the Act to balance the equities. Similarly, in certain cases, an unsuccessful party may have obtained interim protection during the arbitral proceedings, such as an order restraining invocation of a bank guarantee. Upon the rendering of the arbitral award, such interim protection ordinarily stands vacated. However, the unsuccessful party may challenge the award under Section 34 of the Act and obtain a stay on the enforcement of the arbitral award under Section 36(3) of the Act. In such circumstances, immediate removal of interim protection, for

example, in relation to a bank guarantee, may result in irreversible prejudice to the unsuccessful party whose challenge to the arbitral award is pending adjudication.

50. Further, the Courts are not disabled from granting '*non-prejudicial*' interim relief in favour of an unsuccessful party in arbitral proceedings, particularly where such relief does not affect the enforceability of the award but merely preserves ancillary rights pending adjudication under Section 34 of the Act as was sought in the case of ***Wind World (India) Ltd.*** (supra).

51. Another interesting conundrum may be where a party is partially successful, inasmuch as, part of its claims are allowed but as a consequence of a higher amount of counter-claim being allowed, it is branded as an unsuccessful party in accordance with ***Dirk India*** (supra) and is not in a position to prevent the other party from selling its assets after the award has been rendered. It is possible that in Section 34 proceedings, the arbitral award may be modified to the extent that the counter-claim is set aside and severed from the award. However, without interim relief, assets may dissipate rendering final success illusory.

52. Consequently, in rare and compelling cases, it may be necessary to permit the unsuccessful party to invoke Section 9 of the Act to seek continuation of the existing interim protection. This assumes greater significance, as noted earlier, in light of the decision in ***Gayatri Balasamy*** (supra) which recognises the Court's power under Section 34 of the Act to modify an arbitral award, including the power to sever '*the "invalid" portion from the "valid" portion of the award*'.

*JUDGMENT IN **HINDUSTAN CONSTRUCTIONS COMPANY LTD. AND ANR.** (SUPRA) IS NOT BINDING PRECEDENT ON PRESENT ISSUE*

53. This Court in ***Hindustan Constructions Company Ltd. and Anr.*** (supra), while rejecting the argument that an award when challenged under Section 34 of the Act becomes unexecutable merely by virtue of such challenge being made, has quoted the judgment by the Bombay High Court in ***Dirk India*** (supra). Accordingly, this Court in ***Hindustan Constructions Company Ltd. and Anr.*** (supra) did not consider whether an unsuccessful party may seek Section 9 relief post-award. It is settled law that observations of Courts must be read in the context in which they appear and not as provisions of a Statute.[4]

54. Consequently, a decision which does not proceed on consideration of an issue cannot be deemed to be law declared to have a binding effect as contemplated by Article 141 of the Constitution[5].

COURTS INTERPRET THE LAW, BUT THEY DO NOT ALTER IT

55. It is equally well settled that Courts interpret the law, they do not alter or amend it[6]. Upon a careful reading of the judgments in ***Dirk India***, ***Nussli Switzerland Ltd., Padma Mahadev*** and ***A. Chidambaram*** (supra), this Court is constrained to observe that the High Courts in the said judgments have adopted a

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[4] *Escorts Ltd. Vs. Commissioner of Central Excise, Delhi-II, (2004) 8 SCC 335*

[5] *MCD Vs. Gurnam Kaur (1989) 1 SCC 101 & State of U.P. Vs. Synthetics & Chemicals Ltd., (1991) 4 SCC 139*

[6] Lord Brougham, in ***Gwynne v. Burnell***, "***(1840) 7 Cl. & F. 572, 696*** said "*If we depart from the plain and obvious meaning on account of such views….we do not in truth construe the Act, but alter it. We add words to it, or vary the words in which its provisions are couched. We supply a defect which the legislature could easily have supplied, and are making the law, not interpreting it…The prolixity of modern statutes, so very remarkable of late, affords no grounds to justify such a sort of interpretation.*"

strained interpretation of a provision that is clear, categorical, and couched in simple and direct terms. This is evident from the reasoning in ***Nussli Switzerland Ltd.*** (supra), wherein it has been held, "*that law is not a logical code…the words of a statute must not be varied has to be harmoniously applied with the second rule that the intention of the legislature has also to be given effect to…words must be interpretated in a manner and given meaning to render the provision workable in a fair manner.*"

56. The principle of contextual or purposive interpretation cannot be invoked where the statutory language is unambiguous and admits of only one meaning. It is trite law that where the expressions employed in a statute are clear, categorical, and leave no room for doubt, the Court must refrain from resorting to contextual or purposive construction[7]. If Courts were to resort to contextual or purposive interpretation so as to arrive at a meaning contrary to the plain language of the statute, it would not only do violence to the statute but at a jurisprudential level would constitute a breach of the doctrine of separation of powers. As Craies on Statute Law (Seventh Edition) cautions, "*It is not, however, competent to a judge to modify the language of an Act of Parliament in order to bring it into accordance with his own views as to what is right or reasonable. Boni judicis est dicere, non jus dare. "No doubt", said Willes J., In Abel v. Lee (1871) L.R. 6 C.P. 365,*

[7] In ***Jugal Kishore Saraf Vs. Raw Cotton Co. Ltd (1955) 1 SCC 248***, this Court has held "The cardinal rule of construction of statutes is to read the statute literally, that is, by giving to the words used by the legislature their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning the court may adopt the same. But if no such alternative construction is possible, the court must adopt the ordinary rule of literal interpretation."

371 "the general rule is that the language of an Act is to be read according to its ordinary grammatical construction unless so reading it would entail some absurdity, repugnancy, or injustice…But I utterly repudiate the notion that it is competent to a judge to modify the language of an Act in order to bring it in accordance with his views of what is right or reasonable." Even this Court in ***DLF Qutab Enclave Complex Educational Charitable Trust vs. State of Haryana and Ors., (2003) 5 SCC 622*** has similarly held, "*Basic rule of interpretation of statute is that the Court shall not go beyond the statute unless it is absolutely necessary so to do*".

57. The test of whether the plain meaning of words leads to repugnancy, injustice, or absurdity is of a very high threshold and may be applied only in the rarest of rare cases, and that too for compelling reasons.

58. Consequently, rule of purposive construction is resorted to only when the provision read literally leads to manifest injustice or absurdity – a threshold not met in the present case.

THRESHOLD FOR INTERIM RELIEF HIGHER FOR UNSUCCESSFUL PARTIES

59. Needless to say, the grant of interim relief under Section 9 of the Act will continue to be guided by well-established principles, namely, the existence of a prima facie case, balance of convenience, and likelihood of irreparable harm or injury. This Court, in ***Essar House Private Limited v. Arcellor Mittal Nippon Steel India Limited, (2022) 20 SCC 178***, has held as under:

> "*47. Section 9 of the Arbitration Act confers wide power on the Court to pass orders securing the amount in dispute in arbitration, whether before the commencement of the arbitral proceedings, during the arbitral proceedings or at any time after making of the arbitral award, but before its enforcement in accordance with Section 36 of the Arbitration Act. All that the Court is required to see is, whether the applicant for interim measure has a good prima facie case, whether the balance of convenience is in favour of interim relief as prayed for being granted and whether the applicant has approached the court with reasonable expedition.*"

60. Undoubtedly, the threshold for grant of interim relief will be higher in the case of an unsuccessful party in arbitration seeking such relief. In rare and compelling cases, permitting the unsuccessful party to invoke Section 9 of the Act would prevent irreparable prejudice and preserve the efficacy of the challenge proceedings. However, the rights of such a party cannot be curtailed merely on the apprehension of possible misuse of a statutory provision.

CONCLUSION

61. For the aforesaid reasons, this Court holds that the judgments of the Bombay, Delhi, Madras, and Karnataka High Courts insofar as they deny an opportunity to unsuccessful parties in arbitration to apply for relief under Section 9, do not lay down good law. The contrary views expressed by the Telangana, Gujarat, and Punjab & Haryana High Courts correctly reflect the statutory position.

62. Consequently, this Court holds 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. However, the Courts would be well advised to exercise care,

caution and circumspection while dealing with a Section 9 application filed by an unsuccessful party in arbitration.

63. Accordingly, Civil Appeal arising out of SLP (C) No.11139/2020 is disposed of.

64. List the Civil Appeals arising out of SLP (C) No.29972/2015 and SLP (C) No. 26876/2014 for hearing on merits after four weeks.

…….J.
[MANOJ MISRA]

…….J.
[MANMOHAN]

New Delhi;
April 24, 2026