

(2025) 08 KL CK 0828

In the High Court Of Kerala

Case No : Regular First Appeal No.103 Of 2025

M/s Sree Lekshmi Cashew Enterprises Pvt. Ltd.

APPELLANT

Vs

M/s Barrow Lane And Ballard Ltd

RESPONDENT

Date of Decision : 20-08-2025

Acts Referred:

Contract Act, 1872 — Section 28

Arbitration and Conciliation Act, 1996 — Section 2(1)(e)(ii), 5, 7, 8, 11, 16, 16(1), 16(5), 30, 30(2), 31, 31(1), 34, 45, 44, 48, 67, 68, 75, 81

Citation : (2025) 08 KL CK 0828

Hon'ble Judges : C.Pratheep Kumar, J

Bench : Single Bench

Advocate : G.Keerthivas, Vidhya Sankar, T.R.Asawas

Final Decision : Dismissed

Judgement

C.Pratheep Kumar, J

1. The plaintiff who filed an anti-international arbitration suit as OS 108 of 2024, before the Additional Sub Court, Kollam, is the appellant herein. (For the purpose of convenience, the parties are hereafter referred to, as per their rank before the trial court.).

2. FACTS OF THE CASE:- The plaintiff is a company incorporated under the Indian Companies Act, having its registered office at Kollam. The 1st defendant is a Private Limited company, having registered office at London, UK. The 2nd defendant is the authorized agent and broker of the 1st defendant, acting on behalf of the 1st defendant. The plaintiff company is engaged in the business of cashew processing and exports. The 1st defendant company is engaged in the business of supplying various types of nuts to processors, packers and wholesalers. The 2nd defendant claiming to be the authorized agent of the 1st defendant, approached the plaintiff for the purchase of Indian American Standard Current crop whole 320 cashew kernels, and a deal was negotiated and confirmed by the 2nd defendant on behalf of the 1st defendant at Kollam.

Accordingly, on 10.04.2024, the 2nd defendant on behalf of the 1st defendant, had given a confirmation letter regarding the deal for sale of Indian American Standard Current crop, whole 320 cashew kernel, one full container load containing about 700 cartons for price USD 2.86 per 1b with the shipment period May 2024. The mode of payment was fixed by cash against the document on presentation. On the same day, another deal was also confirmed at Kollam, on same terms, with the shipment period June, 2024. In both the deals, there was specific understanding to execute a proper contract, containing all the details such as price, advance payment if any, disputes, redressal clauses etc. But after issuing the confirmation letters (Ext.A2 and A3), no such contract was executed between the parties. Since the entire transaction was held in Kollam and the confirmation letter was also signed and delivered at Kollam, in case of any dispute with regard to the above deal, the courts at Kollam alone have jurisdiction. After the confirmation letter, the price of raw cashew nuts in international markets skyrocketed, for no fault of the plaintiff. The raw cashew nuts expected by the plaintiff from overseas were not delivered by the overseas shipper because they had backed out from the same due to sudden and huge price inflation. Therefore, the plaintiff was unable to fulfill the agreed terms in the confirmation letter, due to a force majeure event. Since the confirmation letter issued by the 2nd defendant was not signed by the plaintiff and no payment was received by the plaintiff, it is only an offer and has not yet evolved into an enforceable and binding contract between the parties. The confirmation letter also lacks clarity concerning arbitration clause, including the selection of arbitrators, mode of arbitration and other essential details. Therefore, the defendant has no right or authority to unilaterally pursue the arbitration proceedings against the plaintiff.

3. According to the plaintiff, on 12.7.2024 the defendants sent Ext.A4, an email to the plaintiff demanding performance of the contents of the confirmation letter under the pretext that it is a concluded contract. As per Ext.A5 email dated 15.07.2024, a reply was sent by the plaintiff to the defendants stating that the contract was frustrated due to impossibility in performing the same, and that it got terminated. However, the defendants sent an intimidating letter stating that they have already moved for arbitration and appointed an arbitrator of their choice, ignoring the requests made by the plaintiff. In the absence of any specific contract between the parties, no such arbitration proceeding could be initiated by the defendant. The attempt of the 1st defendant is to have the arbitration proceedings held in London, United Kingdom, without having jurisdiction and against legal principles. Therefore, the plaintiff filed this anti-arbitration suit seeking an injunction restraining the defendants from continuing any legal proceedings against the plaintiff.

4. EVIDENCE:- In the suit, the 2nd defendant was made the representative of the 1st defendant and notice to the 1st defendant was also served on the 2nd defendant. However, the 2nd defendant remained ex parte before the trial court. The plaintiff filed a proof affidavit and marked Exhibits A1 to A16. After

evaluating the evidence on record, the trial court dismissed the suit on the ground that the suit for injunction restraining international arbitration is not maintainable. Being aggrieved by the above judgment and decree of the trial court, the plaintiff preferred this appeal, raising various grounds.

5. POINTS:- Now the points that arise for consideration are the following

- 1) Whether there was a concluded contract between the plaintiff and the 1st defendant for supplying cashew kernel?
- 2) Whether there is any valid arbitration clause in the said contract?
- 3) What is the scope of judicial intervention in an anti-international arbitration suit?
- 4) Whether the plaintiff is entitled to get a decree restraining the international arbitration proceedings initiated by the first defendant against him?

6. Heard Sri.G.Keerthivas Giri, the learned counsel for the appellant/plaintiff and Sri.T.R.Aswas, the learned counsel for the 1st defendant.

7. MAIN ARGUMENTS:- One of the arguments advanced by the learned counsel for the appellant is that there was no concluded contract between the plaintiff and the 1st defendant. According to him, there was only some correspondence between the parties and the understanding was to enter into a formal contract signed by the parties. According to the plaintiff, such a concluded contract was not executed because of some intervening circumstances like huge hike in price of cashew kernel and failure of the plaintiff's overseas shippers to supply raw cashews. It was further argued that in this case there is no valid arbitration clause. Further it was argued that the entire cause of action arose in Kollam. The above arguments of the learned counsel for the appellant were stoutly denied by the learned counsel for the 1st defendant and according to him, Exts.A2 and A3 are two concluded contracts with specific arbitration clause and as such the suit itself is not maintainable. The learned counsel would further argue that there was a long standing relationship between the appellant and the 1st respondent and that all previous contracts between the parties were entered into in the similar manner, as in the case of Ext.A2 and A3.

8. In the instant case, Exhibits A2 and A3 confirmation letters dated 10.4.2024 are the crucial documents relied upon by the 1st defendant. It is true that, in those documents the plaintiff and the 1st defendant did not sign, but the 2nd defendant, signed as the agent of the 1st defendant. In Ext.A5 reply dated 15.7.2024 issued by the plaintiff, the plaintiff admits the existence of a contract with the 1st defendant and contends that due to the sudden price hike it became impossible to perform. Further, in Exhibit A5, the plaintiff seeks extension of time, for performing the contract. In Exhibit A8 reply dated 19.7.2024 issued by the plaintiff to the brokers of the plaintiff as well as to the 1st defendant also, the existence of the contract was not denied. In Ext.A10 reply dated 26.7.2024, the plaintiff while admitting the longstanding relationship with the 1st defendant

expresses their readiness to supply the goods by January – February, 2025. In Exhibit A12 reply dated 21.8.2024 also the plaintiff undertakes to supply the goods in January – February, 2025. There is no dispute with regard to these letters and correspondences between the plaintiff and the 1st defendant through their brokers. Therefore, from Exhibits A2, A3, A4, A5, A8, A10 and A12 correspondence it is crystal clear that the plaintiff agreed to sell to the 1st defendant cashew kernels as per the terms and conditions stipulated in Exts.A2 and A3.

9. ARBITRATION AGREEMENT- NO PARTICULAR FORM:-With regard to the arbitration agreement also, according to the learned counsel, what is important is the intention of the parties. According to him, there is no particular form for an arbitration agreement and from the contents of the arbitration clause in the contract, the intention of the parties is to be gathered. In the decision in Visa International Limited v. Continental Resources (USA) Limited, (2009) 2 SCC 55, in paragraph 18 the Apex Court held that :-

“18. That an arbitration agreement is not required to be in any particular form has been reiterated in more than one decision. [see:Bihar State Mineral Development Corporation Vs. Encon Building (2003) 7 SCC 418]. What is required is to gather the intention of the parties as to whether they have agreed for resolution of the disputes through arbitration. What is required to be decided in an application under Section 11 of the Act is whether there is any arbitration agreement as defined in the Act? It needs no reiteration that Section 7 of the Act does not prescribe any particular form and it is immaterial whether or not expression ‘arbitration’ or ‘arbitrator’ or ‘arbitrators’ has been used in the agreement.”

10. In the decision in Visa International Limited (supra) the Apex Court further held in paragraph 25 and 26 that :

“25. The submission is unsustainable for more than one reason. No party can be allowed to take advantage of inartistic drafting of arbitration clause in any agreement as long as clear intention of parties to go for arbitration in case of any future disputes is evident from the agreement and material on record including surrounding circumstances.

26.What is required to be gathered is the intention of the parties from the surrounding circumstances including the conduct of the parties and the evidence such as exchange of correspondence between the parties. The respondent in none of its letters addressed to the applicant suggested that the dispute between the parties is required to be settled through conciliation and not by arbitration. In response to the applicant's letter invoking the arbitration clause the respondent merely objected to the names inter-alia contending the suggested arbitration would not be cost effective and the demand for arbitration itself was a premature one.”

Therefore, it can be seen that an arbitration agreement does not require any

particular form.

11. ABSENCE OF SIGNATURE-EFFECT:- Now the question to be considered is, whether in an international business contract, the signature of the parties is a prerequisite, so as to bind them? As I have already noted above, on behalf of the 1st defendant, their agent the 2nd defendant affixed his signature, while the plaintiff's signature is not there. The learned counsel for the 1st defendant would argue that absence of the signature has no relevance and what is relevant is the intention of the parties. Relying upon the decision in Trimex International FZE Limited, Dubai v. Vedanta Aluminium Limited, India, (2010) 3 SCC 1, the learned counsel would argue that absence of signature is not relevant when intention of the parties is clear. In the above decision, in paragraph 57, the Apex Court held that :

".....It is essential that the intention of the parties be considered in order to conclude whether parties were ad idem as far as adopting arbitration as a method of dispute resolution was concerned. In those circumstances, the stand of the respondent that in the absence of a signed contract, the arbitration clause cannot be relied upon is liable to be rejected."

12. Therefore, for the mere reason that the signature of the plaintiff was not present in Exts.A2 and A3, it cannot be held that the said document will not create a valid contract. As noted above, from the subsequent correspondence Exts.A4,A5, A8, A10 and A12, the intention of the parties is clear, namely, to do business in sale of cashew kernel. Therefore, even though in Exhibits A2 and A3 the plaintiff and the 1st defendant have not subscribed their signature, from their subsequent correspondence through Exts.A4,A5, A8, A10 and A12, makes their intention clear and it is to enter into a valid contract between the plaintiff and the 1st defendant. Therefore, it is to be held that, as per Exts.A2 and A3 the plaintiff and 1st defendant entered into two valid and concluded contracts.

13. The learned counsel for the 1st respondent would further argue that, in the light of Exception 1 to Section 28 of the Contract Act, the present suit itself is not maintainable. Exception 1 to Section 28 of the Indian Contract Act reads as follows:

"28. Agreements in restraint of legal proceedings, void.-Every agreement,—

(a)

(b)

Exception 1.—Saving of contract to refer to arbitration or mediation dispute that may arise.— This section shall not render illegal a contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred."

14. As per the above exception, if the parties to a contract agrees to resolve their dispute through mediation, such a clause in the agreement is valid and not hit by Section 28 of the Contract Act. The learned counsel would further argue that in the light of Section 5 of the Arbitration and Conciliation Act, 1996 also, the present suit is barred. Section 5 of the Arbitration and Conciliation Act, 1996 reads as follows:

"5. Extent of judicial intervention.- Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part."

15. In this case, the learned counsel for the appellant challenges the very validity of the Arbitration clauses in Exhibits A2 and A3. According to him, the arbitration clause in Exts.A2 and A3 are incomplete and vague as they do not give the essential details like the seat of arbitration, the law governing the arbitration etc. It was also argued that Exhibit A2 and A3 does not in any way oust the jurisdiction of Indian courts or the application of Indian laws. Therefore, according to the learned counsel, the so called arbitration clause present in Exhibit A2 and A3 is ambiguous, incomplete and lacks the necessary particulars to constitute a valid arbitration agreement. Further, according to him, the arbitration clause in an agreement should have its own legs and it is to be considered as a separate agreement, dehors the original agreement. According to him, the so-called agreement for arbitration in Exhibit A2 and A3 lacks clarity so as to have its own legs and on that ground also, according to him, there is no valid arbitration clause. According to the learned counsel, application of Section 16 as well as 5 of the Arbitration and Conciliation Act pre-supposes a validly constituted arbitration clause and also a validly executed contract. According to him, in the instant case there is no validly executed contract as well as a valid arbitration clause and as such Sections 5 and 16 of the Arbitration and Conciliation Act have no application.

16. RULE OF CONTRA PREFERENTEM IN COMMERCIAL CONTRACTS:- The learned counsel for the appellant relying upon the decision of the Hon'ble Supreme Court in Export Credit Guarantee Corporation of India v. Garg Sons International, (2014) 1 SCC 686, would argue that in the instant case, Exhibits A2 and A3 were unilaterally drafted by the 1st respondent and there was no opportunity for the plaintiff to negotiate in respect of the above terms. It was also argued that the arbitration clause in Exhibits A2 and A3 refers to terms and conditions as per NDFTA, a foreign entity with rules and regulations unknown to the appellant. Therefore, it was argued that in the above contracts, the appellant had no equal bargaining power and hence it is a clear instance of forum not convenience.

17. The learned counsel for the 1st respondent would argue that in the case of commercial contracts, the presumption is of equal bargaining power between the parties and as such one party cannot plead ignorance about the clauses contained in the contract. The law is well settled that the rule of contra preferentem does not apply in case of commercial contract, for the reason that a

clause in a commercial contract is bilateral and has mutually been agreed upon (Export Credit Guarantee Corporation of India Ltd. v. Garg Sons International, (2014) 1 SCC 686).

18. The learned counsel, relying upon the arbitration clause in Exts.A2 and A3, would argue that the parties have subjected themselves to arbitration as per the Nut & Dried Fruit Trade Association Rules (NDFTA Rules) relating to arbitration and as such, the plaintiff cannot repudiate the said clause expressly mentioned in Exts.A2 and A3. The learned counsel for the appellant would argue that the appellant is not a member of the said association and as such, the plaintiff is not bound by the NDFTA Rules. Admittedly the plaintiff is a well reputed company engaged in the business field for several years and they had business with the 1st defendant also for several years. Since the presumption is that the contract was entered into after bilateral and mutually been agreed upon terms, rule of contra preferentem does not apply in such commercial contracts. In the above circumstance, now the plaintiff cannot contend that they entered into Exhibits A2 and A3 agreements without knowing its contents.

19. According to the learned counsel for the 1st respondent, on several previous occasions, in similar circumstances, the plaintiff honored the contract and shipped the same kind of goods to the 1st defendant/respondent and that in such instances also, the contract contained the identical terms of NDFTA Rules and its arbitration clause. In the counter affidavit filed by the 1st defendant, there was a specific averment that on identical terms and conditions on earlier occasions, the plaintiff shipped the same kind of goods to the 1st defendant, but the same was not denied in the reply affidavit filed by the plaintiff. Moreover, in Exhibits A10 and A12 letters issued by the plaintiff, they admitted long standing business relationship with the 1st defendant. The fact that in the previous contracts also similar arbitration clauses were available in Exhibits A2 and A3 was not denied by the learned counsel for the plaintiff also. The explanation given by the learned counsel in that respect is that, on previous occasions there was no dispute between the parties and as such, the impact of such a clause was never noticed by the plaintiff. Therefore, it can be seen that the very same arbitration clause present in Exhibits A2 and A3 were already present in the previous contracts between the parties and as such, now the plaintiff cannot take a contention that they are not aware of the NDFTA Rules and its arbitration as mentioned in Exhibit A2 and A3. The fact that on previous occasions there was no dispute and hence, the above arbitration clause was not invoked and its impact was not understood by the plaintiff, is not a ground for denying the said arbitration clause present in Exts.A2 and A3.

20. As argued by the learned counsel for the 1st respondent, in Exhibit A4 e-mail communication dated 12.7.2024 itself, the 1st defendant has mentioned about the arbitration clause. Thereafter, the appellant has issued Exhibit A5 letter dated 15.7.2024, Exhibit A8 letter dated 19.7.2024, Exhibit A10 letter dated 26.7.2024 and Exhibit A12 letter dated 21.8.2024. In those letters also, the appellant has

not denied the existence of the arbitration clause brought to his notice by the 1st defendant through Exhibit A4 e-mail communication dated 12.7.2024. Thereafter, only in Exhibit A16 letter dated 13.9.2024, the plaintiff questioned the validity of the Arbitration clause for the first time. Till then, the plaintiff was only seeking time for honouring the contract on the ground that the price of the cashew has skyrocketed. However, in the meantime, as per Exhibit A15, arbitral claim dated 29.08.2024 the 1st defendant had appointed their arbitrator and called upon the plaintiff to nominate their own arbitrator. Thereafter, the appellant preferred the present suit on 01.10.2024. The trial court dismissed the suit on 22.01.2025 and thereafter, on 07.02.2025 the Arbitral Tribunal passed an award in respect of the dispute between the plaintiff and the defendant and communicated the award to the plaintiff. Thereafter the present appeal has been preferred on 22.03.2025.

21. PARTIES CAN CHOOSE SEAT OF ARBITRATION OUTSIDE INDIA:- Another argument advanced by the learned counsel for the appellant is with regard to the jurisdiction of the Arbitral Tribunal constituted by the 1st defendant. The attempt of the learned counsel for the appellant is to show that the entire cause of action arose within the limits of the courts in Kollam district and as such the 1st defendant was not justified in initiating arbitration proceedings in London. The learned counsel for the 1st respondent, relying upon the arbitration clause in Exts.A2 and A3, would argue that the parties have subjected themselves to arbitration as per the Nut & Dried Fruit Trade Association Rules (NDFTA Rules) relating to arbitration and as per the above Rules the seat of arbitration is in London and hence the plaintiff cannot now question the seat of arbitration chosen by the parties.

22. In the decision in PASL Wind Solutions Private Limited v. GE Power Conversion India Private Limited (2021) 7 SCC 1, the question involved was whether two companies incorporated in India can choose a forum for arbitration outside India and whether an award made at such a forum outside India, to which the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 applies, can be said to be a foreign award under Part II of the Arbitration and Conciliation Act, 1996. The Apex Court held that the parties can mutually agree to resolve their dispute by arbitration and they can also choose the seat of arbitration in a foreign country. It was also held that if the place of arbitration is not India, Part I of the Arbitration and Conciliation Act does not apply. At the same time, the Award passed in such an instance will be a foreign award enforceable under Part II of the Arbitration and Conciliation Act.

23. SUPPRESSION OF FACTS:- The learned counsel for the 1st respondent would argue that the plaintiff has filed the suit before the trial court after the commencement of the arbitration proceedings, but suppressing the fact that arbitration has already commenced. He would also argue that in this case the Arbitrator has passed an award even before the appeal was filed even then, in the appeal, passing of the arbitral award was suppressed by the plaintiff. On the other hand, according to the learned counsel for the plaintiff, when the suit was

filed, no such award was passed and only after dismissal of the suit and before the plaintiff obtained a certified copy of the judgment, the so called award was passed and since the appeal is filed challenging the impugned judgment decree passed in the suit, there is no scope for mentioning about the award in this appeal also. Therefore, according to him, there is nothing wrong in not mentioning the award in the appeal. The learned counsel would further submit that, at the time of the admission itself he has brought to the attention of this court about the passing of the award and as such, nothing was suppressed from this court regarding the award passed in this case. In this context it is to be noted that, though in the memorandum of appeal there is no mention about the award, at the time of admission it was seen disclosed.

24. After the 2015 amendment to Section 2(1)(e) (ii) of the Arbitration and Conciliation Act, the jurisdiction in matters relating to international commercial arbitration is exclusively with the High Court. Therefore, when an application for execution of the award against the appellant is filed by the 1st defendant, the plaintiff will get an opportunity to raise his objections as provided under Section 48 of the Arbitration and Conciliation Act.

25. Section 48 of the Arbitration and Conciliation Act, 1996, reads as follows:

"48. Conditions for enforcement of foreign awards.

(1) Enforcement of a foreign award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the Court proof that

(a) the parties to the agreement referred to in section 44 were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(b) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(c) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration: Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be enforced; or

(d) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(e) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

(2) Enforcement of an arbitral award may also be refused if the Court finds that-
(a) the subject-matter of the difference is not capable of settlement by arbitration under the law of India; or

(b) the enforcement of the award would be contrary to the public policy of India.

[Explanation 1. [Substituted by Act No.3 of 2016 dated 31.12.2015.] - For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,-

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice. Explanation 2. - For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]

(3) If an application for the setting aside or suspension of the award has been made to a competent authority referred to in clause (e) of sub-section (1) the Court may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security."

26. It is true that, at present, the 1st defendant cannot file an execution petition for executing the award passed in his favour, in the light of an ad interim injunction passed by this court, at the time of admission, restraining the respondents from proceeding with the execution of the award passed against the plaintiff. According to the learned counsel, the civil court has no jurisdiction to grant any such injunction as the suit itself is not maintainable. Therefore, he prayed for immediate lifting of the ad interim injunction and also prayed for awarding exemplary costs against the plaintiff.

27. OBJECT OF THE ARBITRATION:- The object of Arbitration and Conciliation (Amendment) Act, 2015 was to make arbitration process cost effective, speedy, with minimum Court intervention. In the decision in Union of India v. Varindera Constructions Ltd. and Others, (2018) 7 SCC 794, with regard to the primary object of the arbitration, the Hon'ble Supreme Court held in paragraph 12 as follows:

"The primary object of the arbitration is to reach a final disposition in a speedy, effective, inexpensive and expeditious manner. In order to regulate the law regarding arbitration, legislature came up with legislation which is known as Arbitration and Conciliation Act, 1996. In order to make arbitration process more effective, legislature restricted the role of courts in case where matter is subject to the arbitration. Section 5 of the Act specifically restricted the interference of the courts to some extent. In other words, it is only in exceptional

circumstances, as provided by this Act, the court is entitled to intervene in the dispute which is subject matter of arbitration. Such intervention may be before, at or after the arbitration proceeding, as the case may be. In short, court shall not intervene with the subject matter of arbitration unless injustice is caused to either of the parties."

28. In the decision in International Nut Alliance LLC v. Johns Cashew Company, 2022 (1) KLT 222, a Division Bench of this Court while dealing with the necessity to complete the arbitral proceeding as per the schedule and without delay, held in paragraph 9 that :

"It is also well known that schedules fixed by Arbitral tribunals abroad for completion of arbitral proceedings and for enhancement of arbitral awards are strictly adhered to, having regard to the adverse impact, the delay would have on international commercial dealings".

29. In the decision in Kandla Export Corporation and Ors. v. OCI Corporation and Ors., (2018) 14 SCC 715 while examining the objectives of the Arbitration and Conciliation Act, 1996 and Commercial Courts Act, 2015 in paragraph 28, the Apex Court held that :

"The matter can be looked at from a slightly different angle. Given the objects of both the statutes, it is clear that arbitration itself is meant to be a speedy resolution of disputes between the parties. Equally, enforcement of foreign awards should take place as soon as possible if India is to remain as an equal partner commercially speaking, in the international community".

30. In the decision in Voestalpine Schienen GMBH v. Delhi Metro Rail Corporation Ltd. (2017) 4 SCC 665, while emphasizing the necessity to create a conducive arbitration culture in the country, the Apex Court held paragraph 30 as follows:

"Time has come to send the positive signals to the international business community in order to create a healthy arbitration environment and a conducive arbitration culture in this country".

31. KOMPETENZ-KOMPETENZ PRINCIPLE:- The learned counsel for the respondents would argue that even if the plaintiff challenges the validity of the arbitration agreement or competence or jurisdiction of the arbitrator, the challenge is to be made before the Arbitral tribunal itself and not before a civil court. In support of the above argument, the learned counsel has relied upon Section 16 of the Arbitration and Conciliation Act, which reads as follows:

16. Competence of arbitral tribunal to rule on its jurisdiction.-

(1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,

(a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and

(b) a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.

(3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

(4) The arbitral tribunal may, in either of the cases referred to in sub-section (2) or sub-section (3), admit a later plea if it considers the delay justified.

(5) The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.

(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34."

32. IF ARBITRATION AGREEMENT ITSELF IS DISPUTED:-Relying upon several decisions the learned counsel would argue that even if one of the parties has objection to initiation of arbitration proceedings on the ground that there is no arbitration agreement or validity of the arbitration clause or the competence of the Arbitral Tribunal, the remedy is to approach the Arbitral Tribunal itself and not the civil court. In the decision in *Nimet Resources Inc. and Another v. Essar Steels Ltd.* (2000) 7 SCC 497, the Apex Court has held in paragraph 5 as follows:

".....Therefore, in a matter where there has been some transaction between the parties and the existence of the arbitration agreement is in challenge, the proper course for the parties is to trash out such question under Section 16 of the Act and not under Section 11 of the Act. "

33. As argued by the learned counsel, unless the court finds that the agreement itself is null and void, inoperative or incapable of being performed, the parties shall be referred to mediation. In the decision in *Shakti Bhog Foods Ltd. v. Kola Shipping Limited*, (2009) 2 SCC 134, in paragraph 31 and 32, the Apex Court held that:

"As per the provisions of the Section 45 of the Act, it is clear that at the request of one of the parties or any person claiming through or under him the court shall refer the parties to arbitration unless it finds that the said agreement is null and void, inoperative or incapable of being performed. In the present case, there appears to be no such thing to say that the so called agreement entered into by the parties is in any way to be termed as null and void or inoperative or incapable of being performed.

It is further observed by us that the claims raised by the appellant before us

about the non-existence of the charter party agreement can also be raised by the same before the arbitral tribunal at London. Under the English Arbitration Act 1996, as per Sections 30 and 31 of the said Act, the arbitral tribunal may rule on its own jurisdiction and also can decide on the existence of a valid arbitration agreement. This is similar to the provisions under Section 16 of the Act, whereby the arbitral tribunal can decide on its jurisdiction as also on the existence or validity of the arbitration agreement.”

34. In the instant case, there is absolutely no evidence to hold that the agreement itself is null and void, inoperative or incapable of being performed. In fact, even the plaintiff has no such specific case. Their case is only to the effect that the arbitration clause is ambiguous and lacks some details.

35. Relying upon the decision *A.Ayyasamy v. A. Paramasivam and others*, (2016) 10 SCC 386, the learned counsel would argue that even if one of the parties has objection to initiation of arbitration proceedings on the ground that there is no arbitration agreement or validity of the arbitration clause or the competence of the Arbitral Tribunal, the remedy is to approach the Arbitral Tribunal itself and not the civil court. In the above decision, in paragraph 12.2 the Apex Court held that :

“12.2. When arbitration proceedings are triggered by one of the parties because of the existence of an arbitration agreement between them, Section 5 of the Act, by a non-obstante clause, provides a clear message that there should not be any judicial intervention at that stage scuttling the arbitration proceedings. Even if the other party has objection to initiation of such arbitration proceedings on the ground that there is no arbitration agreement or validity of the arbitration clause or the competence of the Arbitral Tribunal is challenged, Section 16, in clear terms, stipulates that such objections are to be raised before the Arbitral Tribunal itself which is to decide, in the first instance, whether there is any substance in questioning the validity of the arbitration proceedings on any of the aforesaid grounds. It follows that the party is not allowed to rush to the Court for an adjudication. Even after the Arbitral Tribunal rules on its jurisdiction and decides that arbitration clause is valid or the Arbitral Tribunal is legally constituted, the aggrieved party has to wait till the final award is pronounced and only at that stage the aggrieved party is allowed to raise such objection before the Court in proceedings under Section 34 of the Act while challenging the arbitral award.”

36. In paragraph 45.2 of *A.Ayyasamy* (supra), the Apex Court further held that :

“Parties who enter into commercial dealings and agree to a resolution of disputes by an arbitral forum exercise an option and express a choice of a preferred mode for the resolution of their disputes. Parties in choosing arbitration place priority upon the speed, flexibility and expertise inherent in arbitral adjudication. Once parties have agreed to refer disputes to arbitration, the court must plainly discourage and discountenance litigative strategies designed to avoid recourse to arbitration. Any other approach would seriously place in uncertainty the

institutional efficacy of arbitration. Such a consequence must be eschewed.”

37. In the decision in *Kvaerner Cementation India Ltd. v. Bajranglal Agarwal and another* (2012) 5 SCC 214, the Apex Court held that objection with respect to existence or validity of the arbitration agreement, is to be decided by the arbitral tribunal and not by the civil court. In paragraph 3, the Apex Court held that :

“There cannot be any dispute that in the absence of any arbitration clause in the agreement, no dispute could be referred for arbitration to an arbitral Tribunal. But, bearing in mind the very object with which the Arbitration and Conciliation Act, 1996 has been enacted and the provisions thereof contained in Section 16 conferring the power on the arbitral Tribunal to rule on its own jurisdiction including ruling on any objection with respect to existence or validity of the arbitration agreement, we have no doubt in our mind that the Civil Court cannot have jurisdiction to go into that question.”

38. In the decision in *Ravi Arya and Ors., v. Palmview Investments Overseas Ltd. and Ors.* MANU/MH/0214/2019, the Bombay High Court held in paragraph 30 that :

“.....Moreover, there are decisions of the Apex Court wherein it is held that once the matter is before the Arbitral Tribunal, the Civil Court cannot entertain any proceedings seeking injunction against the Arbitral Tribunal during the course of arbitration proceedings. So also, bearing in mind the very object with which the Arbitration and Conciliation Act, 1996 has been enacted and the provisions thereof contained in Section 16 conferring the power on the Arbitral Tribunal to rule on its own jurisdiction, including ruling on any objection with respect to existence or validity of the arbitration agreement, we have no doubt in our mind that the civil court cannot have jurisdiction to go into that question. ”

39. In the decision in *Secure Industries Ltd. v. Godrej and Boyce MFG. Co. Ltd and Another* (2004) 3 SCC 447, in paragraph 11, the Apex Court held that :

“....The City Civil Court was right in its approach when it said that the Court could only intervene in respect of matters expressly provided for in the 1996 Act. The validity of the proceedings before the Arbitral Tribunal is an issue which the Council, and not the Court, could decide under Section 16 of the 1996 Act. Sub-section (1) of Section 16 opens with the words " The Arbitral Tribunal may rule on its jurisdiction...". It has been held by this Court that the Arbitral Tribunal's authority under Section 16 is not confined to the width of its jurisdiction but goes to the very root of its jurisdiction. (*Konkan Railways Corporation Ltd. V. Rani Construction Pvt. Ltd.* 2002 (2) SCC 388). Therefore, the Council can go into the question whether its authority had been wrongly invoked by the appellant and it is open to it to hold that it had no jurisdiction to proceed with the matter.”

40. In the decision in *Shree Subhlaxmi Fabrics (P) Limited v. Chand Mal Baradia and others* (2005) 10 SCC 704, in paragraph 14 the Apex Court held that:

"The consistent view taken by this Court, therefore, is that contentious issues should not be gone into or decided at the stage of appointment of an arbitrator and no time should be wasted in such an exercise. The remedy of the aggrieved party is to raise an objection before the arbitral tribunal as under Section 16 of the Act it is empowered to rule about its own jurisdiction. It is, therefore, open to the plaintiff to raise all the pleas before defendant No. 2 including a plea that there is no arbitration agreement between the parties for referring any dispute for arbitration before the Hindustan Chamber of Commerce, Mumbai...."

41. In the decision in *National Aluminium Company Ltd. v. Subhash Infra Engineers Private Ltd and another* (2020) 15 SCC 557, in paragraph 14 the Apex Court held that :

"14. Having regard to aforesaid judgment of this Court and various communications between the parties, we are in agreement with the submission made by the learned senior counsel for the appellant that, if the first respondent wants to raise an objection with regard to existence or validity of the arbitration agreement, it is open for the first respondent to move an application before the arbitrator, but with such plea, he cannot maintain a suit for declaration and injunction.....

42. In the decision in *Swiss Timing Limited. v. Commonwealth Games 2010 Organising Committee*, (2014) 6 SCC 677, in paragraph 30, the Apex Court held that :

"I must also notice here that the defence of the contract being void is now-a-days taken routinely along with the other usual grounds, to avoid/delay reference to arbitration. In my opinion, such ground needs to be summarily rejected unless there is clear indication that the defence has a reasonable chance of success....."

43. In the above decision, the Apex Court further held that, to shut out arbitration at the initial stage would destroy the very purpose for which the parties had entered into arbitration. The court further held that if in an agreement between the parties before the Civil Court, there is a clause for arbitration, it is mandatory for the Civil Court to refer the dispute to an arbitrator.

44. MINIMISE THE SUPERVISORY ROLE OF THE COURTS:-With regard to the legislative intention to minimise the supervisory role of the courts in the arbitral process, the Apex Court in *Trimex International (supra)*, reiterated an earlier decision in *Great Offshore Ltd., v. Iranian Offshore Engg. & Construction Co.*, (2008) 14 SCC 240, in paragraph 62 as follows:

"The court has to translate the legislative intention especially when viewed in light of one of the Act's "main objectives": "to minimise the supervisory role of Courts in the arbitral process. [See: Statements of Objects and Reasons of Section 4(v) of the Act]. If this Court adds a number of extra requirements such as stamps, seals and originals, we would be enhancing our role, not minimising it. Moreover, the cost of doing business would increase. It takes time to

implement such formalities. What is even more worrisome is that the parties' intention to arbitrate would be foiled by formality. Such a stance would run counter to the very idea of arbitration, wherein tribunals all over the world generally bend over backwards to ensure that the parties' intention to arbitrate is upheld. Adding technicalities disturbs the parties' "autonomy of the will" (*l'autonomie de la volonte*), i.e., their wishes..."

45. POWER, DUTY AND JURISDICTION OF THE COURT:- The power and jurisdiction of courts in arbitral matters was considered by the Hon'ble Supreme Court in the decision in *Adhunik Steels Ltd. v. Orissa Manganese and Minerals (P) Ltd.* (2007) 7 SCC 125 relied upon by the learned counsel for the 1st respondent. In the above decision, the Apex Court held in paragraph 12 that:

"The power and jurisdiction of courts in arbitral matters has been the subject of much discussion. The relationship between courts and arbitral tribunals have been said to swing between forced cohabitation and true partnership. The process of arbitration is dependent on the underlying support of the courts, who alone have the power to rescue the system when one party seeks to sabotage it...."

46. In the decision in *Ethiopian Airlines v. Stick Travels (P) Ltd.* (2001) 7 SCC 454, in paragraph 3, the Apex Court held that:

".....The laudable objectives and great expectations in spite of best efforts have never reached the desired results. To reach it, time and again comprehensive review of the Arbitration Act through amendments and re-enactment has been made. Every words of any statutes having stretchable meaning gives fertility to the Bar to interpret it such, as to suit the exigency of his client by finding loopholes in a statute in spite of the best attempt by the legislature to conclude the disputes at the earliest, by raising various objections thus frustrating its very objectives. It is here courts have to play an important role of taking recourse to such interpretation which subserve the objective and defeat any attempt to flout it."

47. TERMINATION OF AGREEMENT WILL NOT AFFECT ARBITRATION CLAUSE:- In the decision in *Ashapura Mine-chem Ltd. v. Gujarat Mineral Development Corporation*, (2015) 8 SCC 193, the Apex Court held that, even though the MoU between the parties was terminated, the arbitration agreement contained therein will remain valid and the parties are entitled to invoke the said clause for referring their dispute to arbitration.

48. SUPERVISORY JURISDICTION TO SEAT COURT:- In the decision in *Avitel Post Studioz Limited and others v. HSBC PI Holdings (Mauritius) Ltd.* (2024) 7 SCC 197, the Apex Court held that, it is the seat court, which has exclusive supervisory jurisdiction to determine claims for a remedy relating to the existence or scope of arbitrator's jurisdiction or the allegation of bias. A contrary approach would go against the scheme of the New York Convention, which has been incorporated in India. The court further held that, it needs emphasizing that

bona fide challenges to arbitral appointments have to be made in a timely fashion and should not be used strategically to delay the enforcement process.

49. SCOPE OF ANTI-ARBITRATION INJUNCTION:- As argued by the learned counsel for the 1st respondent, time and again the Hon'ble Supreme Court and this court have deprecated the practice of granting injunction against execution of foreign awards and also emphasized the necessity for enforcing foreign awards without delay. The learned counsel for the appellant relying upon the decision of the Delhi High Court in Engineering Projects India Ltd. through its Managing director. v. MSA Global LLC Oman (CS(OS) 243/2025 decided on 25.07.2025) would argue that the concept of anti-arbitration injunction is not alien to other prominent jurisdictions, especially in cases of vexatious and oppressive conduct, is not denied. After referring to the dictionary meaning of the words 'oppressive' and 'vexatious', the Court held that 'vexatious and oppressive' conduct primarily refers to an abuse of legal process, vexatious by reason of intent and lack of merit, and oppressive by reason of undue harshness or unfair domination, which courts are empowered to restrain, in order to preserve the integrity of judicial proceedings.

50. In support of the argument that a suit for an anti-arbitration injunction will lie in a civil court, the learned counsel for the plaintiff has relied upon the decision of the Kolkata High Court in The Board of Trustees of the Port of Kolkata v. Louis Dreyfus Armatures SAS, (2014) SCC OnLine Cal. 17695. In the above decision, the Kolkata High Court held that if the party raises an issue as to the existence of a valid arbitration agreement and court finds that no such agreement exists, or if the arbitration agreement is null and void, inoperative or incapable of being performed, or the continuation of a foreign arbitration proceeding would be oppressive, vexatious or unconscionable, a suit for anti-arbitration injunction will lie in a civil court.

51. Relying upon the decision of the Hon'ble Supreme Court in PASL, Wind Solutions Private Limited v. G E Power Consortium India Private Limited, (2021) 7 SCC 1, the learned counsel would argue that Part-I of the Arbitration and Conciliation Act has no application to a foreign seated arbitration and Part II has application only with respect to enforcement of a foreign award and as such, the present suit filed by him is not an application either under Part I or under Part II and hence it is not barred under any law.

52. DEFENCE OF FORUM NON-CONVENIENCE:- In the decision in Modi Entertainment Network and Ors. v. W.S.G Crickets PTE Ltd. (2003) 4 SCC 341, the dispute was with regard to telecast of the Cricket World Cup held in Kenya between 03.10.2000 and 15.10.2000. When there arose some dispute, the appellants filed a suit in the Bombay High Court claiming damages, while the respondent filed an action in the High Court of Justice, Queens Bench Division, England. A Single Judge of the High Court granted anti suit injunction against the proceeding in England, while the same was vacated by a Division Bench of the same High Court. While upholding the decision of the Division Bench of the High

Court, the Hon'ble Supreme Court held that:

"It cannot be laid down as a general principle that, once the parties have agreed to submit to the jurisdiction of a foreign court, the proceedings or the action brought either in the court of natural jurisdiction or in the court of choice will per se be oppressive or vexatious."

The court further held that,

".....But then the jurisdiction clause indicates that the intention of the parties is to resolve the dispute in accordance with the principles of English law by an English court, unless good and sufficient reasons are shown by the appellants, the intention of the parties as evidenced by their contract must be given effect to."

53. In the above decision, one of the contentions raised by the appellant that the English Court is a forum non-convenience in view of the alleged breach of the agreement by the respondent in the manner not foreseen, was held not good and sufficient reason to ignore the jurisdiction clause. The second ground raised by the appellant that the English Court has no connection with either of the parties or the subject matter and it is not a court of natural jurisdiction are not good and sufficient reason in itself to justify the court of natural jurisdiction to interdict action in a foreign court of choice of the parties.

54. SIMILAR REMEDIES AVAILABLE UNDER THE ENGLISH ARBITRATION ACT, 1996:- Relying upon the provisions of the English Arbitration Act, 1996, the learned counsel for the respondents would submit that, the remedies available to a party to an arbitration agreement in India are available as per the English Arbitration Act also. As per Section 30 of the English Arbitration Act, 1996, the tribunal itself has the jurisdiction to rule on its own jurisdiction, including whether there is a valid arbitration agreement, whether the tribunal is properly constituted, and what matters have been submitted to arbitration in accordance with the arbitration agreement. Sub-section (2) of Section 30, further provides that any such ruling under sub-section (1) may be challenged by any available arbitral process of appeal or review or in accordance with the provisions of this Part. Section 31 provides for objection to substantive jurisdiction of the tribunal. As argued by the learned counsel for the 1st respondent, the remedy under Section 31 of the English Arbitration Act is an additional remedy available under the above Act. Section 67 deals with challenging the Award, which is corresponding to Section 34 of the Indian Arbitration and Conciliation Act. Section 68 is the remedy available for challenging the Award. Therefore, in the light of Sections 30, 31, 67 and 68 of the English Arbitration Act, it can be seen that all the remedies available under the Indian Arbitration and Conciliation Act are available under the English Arbitration Act also.

55. It is true that in Exhibit A2 and A3 the seat of arbitration as well as the law applicable for the arbitration were not specified. Instead, Exhibits A2 and A3 only state that NDFTA Rules will apply. At the time of arguments, the learned counsel

for the 1st respondent has produced a copy of the Rules of Arbitration and Appeal under the NDFTA referred to in Exhibit A2 and A3. The learned counsel for the appellant has vehemently opposed the receipt of the above Rules on the ground that, in Exhibits A2 and A3 the details like the seat of arbitration and the law of arbitration are not specified and the said lacuna cannot be filled up by producing additional evidence at the appellate stage. It is to be noted that in Exhibit A2 and A3, it is specifically stated that the dispute is to be resolved through arbitration as per NDFTA Rules. It also states that both parties have knowledge about the above Rules. It is true that the details of the NDFTA Rules were not appended to Exhibits A2 and A3. I have already found that the parties were doing business in similar field for the past several years and it has come out in evidence that in their previous contracts also similar arbitration clauses were there. In the above circumstance, in order to clarify and explain the Rules referred to in Exhibit A2 and A3, there is nothing wrong in referring to the NDFTA Rules produced at the time of arguments. As per the above rules, the seat of the Arbitration shall be in London.

56. In the decision in *Bharath Aluminium Company Ltd. v. Kaiser Aluminium Technical Service Inc. and Ors.* (2012) 9 SCC 552, the question involved was whether a suit for interim injunction would be maintainable in India, on the basis of an international commercial arbitration with a seat outside India. A Five Judges Bench of the Apex Court held that no suit for injunction simplicitor would be maintainable in India on the basis of an international commercial arbitration with a seat outside India.

57. A Seven Judges Bench of the Hon'ble Supreme Court in the decision in *IN Re: Interplay between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899*, (2024) 6 SCC 1, held that the power of the court is limited to the enquiry under Section 8 and 11 to see whether an arbitration agreement prima facie exists and under the principle of competence-competence, the arbitral tribunal has the authority to rule on jurisdiction and related objections including stamp duty compliance as per Section 16 of the Act. While dealing with the interplay between the Stamp Act and the Arbitration and Conciliation Act, the court further held that, Section 5 of the Act limits the judicial authority in the sphere, only to the extent that provided in Part I of the Arbitration and Conciliation Act. It was further held that one of the main objectives behind the enactment of the Arbitration and Conciliation Act was to minimise the supervisory role of courts in the arbitral process by confining it only to the circumstances stipulated by the legislature. It was further held that, therefore, every provision of the Arbitration Act ought to be construed in view of Section 5 to give true effect to the legislative intention of minimal judicial intervention. The 7 Judges Bench reiterated that it is a general rule of international arbitration law that an Arbitral Tribunal has the power to determine its own jurisdiction.

58. SUMMARY OF THE ABOVE DISCUSSION:

- i) An arbitration agreement does not require any particular form. What is required is the intention of the parties to resolve their dispute through arbitration.
- ii) For the validity of an arbitration agreement, absence of signature of any of the parties is not material and what is essential is the intention of the parties for resolving their dispute through mediation. If their intention is clear from their conduct, absence of signature of any party in the agreement is not relevant.
- iii) In commercial contracts, the presumption is of equal bargaining power between the contracting parties and hence the rule of contra preferentem does not apply in such contracts.
- iv) The primary object of the Arbitration is to reach a final disposition in a speedy, effective, inexpensive and expeditious manner.
- v) The legislative intention is to minimize the supervisory role of the courts in the arbitral process, by confining it only to the circumstances stipulated by the legislature.
- vi) A civil court can interfere in the dispute, which is a subject matter of arbitration only in exceptional circumstances as provided under Section 5 of the Arbitration and Conciliation Act, 1996.
- vii) All questions relating to the validity of the Arbitration agreement, the competence and jurisdiction of the arbitrator etc. are to be decided by the Arbitral Tribunal itself and not by the Civil Court.
- viii) Enforcement of foreign awards should take place as soon as possible if India is to remain as an equal partner in the international business community. We also have to send positive signals to the international business community in order to create a healthy arbitration environment and a conducive arbitration culture in this country.
- ix) Even two companies incorporated in India can choose a foreign country as the seat of their arbitration.
- x) Anti arbitration injunction is an exceptional remedy which can be granted only in exceptional circumstances like no agreement exists, arbitration agreement is null and void, inoperative or incapable of being performed or if continuation of a foreign arbitration proceeding would be oppressive, vexatious or unconscionable.
- xi) Once the parties have agreed to submit to the jurisdiction of a foreign court, the proceedings brought either in the court of natural jurisdiction or in the court of choice, per se, will not be oppressive or vexatious.
- xii) No suit for injunction simplicitor would be maintainable in India on the basis of an international commercial arbitration with a seat outside India. It is the seat of the court which has exclusive supervisory jurisdiction to intervene in case of necessities.

59. In the instant case, by way of Exhibit A2 and A3 documents, there are two

written contracts between the plaintiff and the first defendant. In Exhibit A2 and A3, there is an arbitration clause. It is true that in Exhibit A2 and A3, the details like the seat of arbitration and the law applicable for arbitration are not specifically mentioned. However, from the contents of the arbitration clause available in Exhibits A2 and A3 it can be safely concluded that, what is intended by the parties is NDFTA Rules. Therefore, it can be seen that both the parties have agreed to resolve their dispute through arbitration as per the NDFTA Rules. As per the NDFTA Rules, the seat of arbitration is London in England and as such the law applicable is the Arbitration Act of England. There is no merit in the argument that the arbitration clause in Exts.A2 and A3 are vague and not specific. In the instant case there is also no evidence to hold that the arbitration agreement is null and void, inoperative or incapable of being performed, or the continuation of a foreign arbitration proceeding would be oppressive, vexatious or unconscionable, so as to maintain a suit for anti-arbitration injunction in a civil court. In the above circumstance, all questions including the validity of the arbitration clause is to be decided by the arbitral tribunal and not by a civil court. In this case there are no exceptional circumstances so as to deviate from the above rule.

60. From Exhibit A15 it can be seen that, on 29.08.2024, the 1st defendant had initiated the arbitration proceedings. It was thereafter on 01.10.2024, the plaintiff filed the suit before the trial court. It means that the plaintiff filed the present suit after the commencement of the arbitration proceedings. The law is well settled that, once the arbitration proceedings has commenced, the Civil Court has no jurisdiction to restrain the same. A suit for anti-arbitration injunction is beyond the scope of a civil court. Moreover, the civil court has no jurisdiction to pass an order of injunction against an arbitration seated outside India. In the above circumstances, the trial court was perfectly justified in holding that the present suit is not maintainable. In the above circumstance, I do not find any irregularity or illegality in the impugned judgment and decree passed by the trial court so as to call for any interference. In the above circumstances, this appeal is liable to be dismissed. Points answered accordingly.

61. Relying upon the decision of the Hon'ble Supreme Court in Ramrameshwari Devi and others v. Nirmala Devi and others (2011) 8 SCC 249, the learned counsel for the 1st respondent would argue that, in the instant case, the appellant has obtained an ex parte injunction suppressing material facts and as such, compensatory cost is to be awarded to the 1st respondent. It is true that in the above decision, the Apex Court held in paragraph 38 that:

"If injunction has been granted on the basis of false pleadings or forged documents, then the Court concerned must impose costs, grant realistic or actual mesne profits and or order prosecution. This must be done to discourage the dishonest and unscrupulous litigants from abusing the judicial system. In substance, we have to remove the incentive or profit for the wrongdoer."

62. It is true that the learned counsel for the 1st defendant has prayed for

exemplary costs, on the ground that the plaintiff has obtained an ad-interim injunction after filing a suit which is not at all maintainable. It is to be noted that, though the plaintiff filed the suit, the trial court has dismissed the same. In appeal, this Court has passed an ad interim injunction only on 29.04.2025. Today this court is dismissing the appeal and vacating the ad-interim injunction passed by this court. Since the appeal has been disposed of without much delay, the 1st defendant has not suffered much on account of the interim injunction for such a period. Therefore, I hold that this is not a fit case in which the prayer for exemplary costs can be awarded. At the same time, in the facts and circumstance of this case, I find no grounds to deny costs to the 1st respondent.

63. CONCLUSION:- In the result, this appeal is dismissed, with costs to the 1st respondent. The ad interim injunction passed by this court on 29.04.2025 is hereby vacated.

64. OTHER REMEDIES LEFT OPEN:- The learned counsel for the appellant would argue that the findings in the impugned judgment and decree of the trial court on the merits of Exhibits A2 and A3 agreements, unless set aside, will stand in the way of resorting to other remedies available under Part II of the Arbitration and Conciliation Act. It is to be noted that the trial court has dismissed the suit on the ground that it is not maintainable. At the instance of the 1st respondent, an arbitrator was appointed and he has already passed an Award against the appellant. In the above circumstances, the impugned judgment and decree of the trial court shall not be allowed to stand in the way of the plaintiff's right to take any contentions, which may be available under Section 48 of the above Act, in any proceedings for enforcement of the Arbitration Award. The learned counsel for the respondents also has not opposed such a remedy available to the appellant. Therefore, while dismissing this appeal, I am inclined to clarify that the findings contained in the impugned judgment and decree of the trial court other than the issue on the maintainability of the suit cannot be considered as conclusive findings and those issues are left open to be agitated in appropriate proceedings.

All the pending interlocutory applications in the appeal stand dismissed.