HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Civil Miscellaneous Appeal No. 1277/2026

Legal Representatives Of Late Shree Ramesh Chandra Patel

(i). Pramila Dangi W/o Late Shree Ramesh Chandra Patel, R/o At Present 105 Everest Ashiyanan Opp. Shreenath Hospital, New Navratan Udaipur, Raj 313001

(ii). Shweta Patel D/o Late Shri Ramesh Chandra Patel, R/o At Present 105 Everest Ashiyanan Opp. Shreenath Hospital, New Navratan Udaipur, Raj 313001

(iii). Rohit Patel S/o Late Shree Ramesh Chandra Patel, R/o At Present 105 Everest Ashiyanan Opp. Shreenath Hospital, New Navratan Udaipur, Raj 313001

----Appellants

Versus

City Pulse Enterprise Private Limited, City Pulse Enterprise Private Limited Having Registered Office At Unique House, Opposite Union Bank Of India, Near Popular House, Icici Bank Lane, Ashram Road, Ahmedabad-380009.

----Respondent

For Appellant(s)	:	Mr. Vikas Balia, Sr. Adv. assisted by Mr. Mrigraj Singh Rathore Mr. Anshuman Mohapatra Mr. Praveen Singh Rathore
For Respondent(s)	:	Mr. Vinish Mittal Ms. Aditi Moad

HON'BLE MR. JUSTICE ARUN MONGA

HON'BLE MR. JUSTICE SANDEEP SHAH

Judgment

1.	**Date of conclusion of arguments**	**12.05.2026**
2.	**Date on which judgment was reserved**	**12.05.2026**
3.	**Whether the full judgment or only the operative part is pronounced:**	**Full Judgment**
4.	**Date of pronouncement**	**22.05.2026**

REPORTABLE

Per Hon'ble Shah, J:

1. By way of the present Civil Miscellaneous Appeal, the appellants-claimants have challenged the order dated 25.02.2026 passed by the learned Judge, Commercial Court, Udaipur in Case No.20/2025, whereby the application filed by the respondent–non-claimant under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act of 1996") has been allowed and the award dated 31.07.2024 passed by the learned Arbitrator has been quashed and set aside. The principal grounds for allowing the said application were that the mandate of the learned Arbitrator had expired and no extension under Section 29A of the Act of 1996 had been granted, and further that the arbitration proceedings so undertaken were beyond jurisdiction, inasmuch as, the dispute in question was exclusively triable by the Rent Tribunal under the Rajasthan Rent Control Act, 2001 (hereinafter referred to as "the Act of 2001").

Factual Matrix:-

2. The brief facts of the case are that the claimant–lessor had entered into a Sub-Lease Agreement with the respondent–non-claimant on 09.04.2009 in respect of Plot No.1 ad-measuring 34,900 sq. ft., situated at Fatehpura, Village Dewali, Tehsil Girwa, District Udaipur. The lease was initially for a period of 50 years; however, a deed of extension came to be executed on 20.04.2011, whereby the period of the lease deed was revised to 75 years. Subsequently, another deed of extension was executed on 09.01.2016, whereby the period of the sub-lease was further extended up to 90 years. As per the lease deed, the respondent-company was required to make payment of Rs.6,00,000/- per month to the appellants–claimants along with escalation as prescribed in the

lease deed and agreed between the parties. It was the case of the appellants–claimants that after 01.03.2020, the respondent–non-claimant failed to make payment of the lease rentals as well as other utility charges and urban development tax.

3. Under Clause 5(e) of the Lease Agreement, the parties had agreed to settle their disputes through arbitration. For the sake of convenience, Clause 5(e) of the Lease Agreement is reproduced hereunder:-

> *"**(e) Arbitration Clause:***
>
> *That in the event of any dispute or difference between the Sub-Lessor and the Sub-Lessee regarding this Deed of Sub-Lease or otherwise, the parties shall enter, in good faith, into negotiations aimed at finding an amicable solution. If the dispute could not be resolved in a satisfactory manner, either party may refer the matter to a sole Arbitrator to be nominated by both the parties with mutual consent. The decision of the Arbitral Tribunal shall be binding and final. The provisions of the Arbitration and Conciliation Act, 1996 or any other statutory amendment, for the time being in force, shall apply. The venue of arbitration shall be at Udaipur and arbitration proceedings shall be conducted in English or Hindi language and any award or awards shall be rendered in English or Hindi. The award of the arbitrator shall be final and conclusive."*

3.1 In pursuance of the arbitration clause, the appellants–claimants, after issuing a legal notice for appointment of Arbitrator and having failed to obtain any response, filed an application under Section 11 of the Act of 1996 before this Court for appointment of an Arbitrator to settle the disputes between the parties. This Court, vide order dated 03.08.2022 passed in S.B. Arbitration Application No.4/2022, allowed the said application and, on the joint request made by both the parties, namely the respondent and the appellants, appointed Shri R.S. Jhala,

Judge (Retd.) of this Court, as the learned Arbitrator to adjudicate upon the disputes between the parties in terms of the arbitration agreement. For the sake of convenience, the order dated 03.08.2022 is reproduced hereunder:-

> *"The present application has been filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 for appointment of an independent Arbitrator on account of a dispute having being arisen between the parties.*
>
> *Both the parties are in agreement that there is an arbitration clause between being clause 5 (e) of the Sub Lease Deed dated 09.04.2009. On account of the dispute having been arisen between the parties, a notice for appointment of Arbitrator was served by the applicant on 16.11.2021. In pursuance of the notice, the respondents have failed to appoint Arbitrator in the matter for resolving the dispute. The parties are in agreement that Mr. R. S. Jhala, retired Judge of this Court may be appointed as Arbitrator in the present case.*
>
> *Ordered accordingly.*
>
> *In the circumstances, the application is allowed. Mr. R. S. Jhala, Retired Judge of this Court, R/o A-28, Chitrakoot Nagar, Udaipur (Mob.9829149514) is appointed as a sole arbitrator to adjudicate upon the dispute between the parties in terms of arbitration agreement and as per the Rajasthan Manual of Procedure for Alternative Dispute Resolution, 2009, as amended up to date and also as per the provisions of Arbitration and Conciliation Act.*
>
> *The record of the case may be transmitted to Mr. R. S. Jhala.*
>
> *The above appointment is subject to the necessary disclosure under Section 12 of the Act.*
>
> *Needles to say that the fees of the arbitrator will be as per Schedule 1V of the Arbitration and Conciliation Act."*

3.2 Subsequently, the arbitration proceedings commenced. The appellants–claimants filed their statement of claim on 18.09.2022, claiming arrears of rent possession of the property damages Municipal and Revenue Taxes etc. along with the interest. Thereafter the respondent–non-claimant filed its statement of defence ***"as well as***

counter claim" on 16.10.2022, to which the appellants–claimants filed their reply on 12.11.2022. The respondent-non-claimant has filed rejoinder on 11.12.2022. Thus, the pleadings stood completed on 11.12.2022. It is, therefore, clear that the respondent–non-claimant had submitted to the jurisdiction of the learned Arbitrator by way of filing the counter claim.

4. The sole Arbitrator, Justice (Retd.) Shri R.S. Jhala, thereafter withdrew from the arbitration proceedings upon being appointed as a member of the Rajasthan Human Rights Commission and informed the same to this Court vide communication dated 16.01.2023. At that stage, an application under Section 11(5) of the Act of 1996 came to be filed by the appellants–claimants before this Court seeking appointment of a fresh Arbitrator to continue the proceedings. Consequently, vide order dated 18.08.2023 passed in S.B. Arbitration Application No.6/2023, this Court allowed the said application and appointed Shri N.N. Mathur, Judge (Retd.), as the learned Arbitrator to adjudicate the disputes between the parties. For the sake of convenience, the order dated 18.08.2023 is reproduced hereunder:-

> *"1. The instant arbitration application has been filed by the petitioner under Section 11(5) of the Arbitration and Conciliation Act, 1996 claiming the following reliefs:-*
>
> > *"1. Appoint a Sole Arbitrator to adjudicate the disputes and differences arising out of or in relation to the Sub Lease Deed dated 09.04.2009 and;*
> >
> > *2. Award costs of this application in favour of the Applicant and against the Respondent: and*
> >
> > *3. Pass such further and other order(s) and / or direction(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."*
>
> *2. Learned counsel for both the parties jointly submit that there is no dispute with regard to the arbitration clause and the venue for arbitration*

proceedings, thus, learned counsels requested that an independent arbitrator may be appointed, as a sole Arbitrator, to resolve the dispute between the parties.

3. In light of such submission, this Court finds that the agreement clause, relating to appointment of the Arbitrator, is required to be invoked and as such, the application, filed by the applicant, is disposed of and while exercising the power conferred under Section 11 of the Act of 1996, appoints ***Hon'ble Shri Justice N.N. Mathur, (Rtd.) (Mobile No.9829027701) resident of 34, Central School Scheme, Air Force Area, Jodhpur,*** *as the sole Arbitrator to adjudicate the dispute between the parties. The payment of cost of arbitration proceedings and arbitration fee shall be made as per the 4th Schedule appended to the Act of 1996.*

4. The intimation of appointment, as aforesaid, may be given by the counsel for the parties as well as by the Registry to ***Hon'ble Shri Justice N.N. Mathur.*** *The above appointment is subject to necessary disclosure being made under Section 12 of the Act of1996.*

5. All pending applications stand disposed of."

4.1 It is relevant to mention here that in the aforesaid consent order, it has been specifically observed that there was no dispute with regard to the arbitration clause and the venue of arbitration.

5. Post that, Shri N.N. Mathur, Judge (Retd.), while acting as the sole Arbitrator, proceeded to adjudicate upon the claims and vide Arbitral Award dated 31.07.2024, allowed the claim of the appellants–claimants and dismissed the counter claim filed by the respondent–non-claimant. Prior to passing of the aforesaid award, the learned Arbitrator had framed the requisite issues for adjudication and vide order-sheet dated 12.07.2024, with the consent of both the parties, the period commencing from 31.08.2023, i.e. the date on which the earlier Arbitrator had informed this Court regarding his inability to continue with the arbitration proceedings, up to 01.07.2023, i.e. the date on which the communication was received by the subsequent sole

Arbitrator Shri N.N. Mathur, Judge (Retd.) for undertaking the arbitration proceedings, was ordered to be excluded for the purpose of determining the period of the mandate of the learned Arbitrator.

6. It is the case of the appellants–claimants that thereafter, on 09.01.2025, they preferred Execution Petition No.02/2025 before the learned Commercial Court. On the other hand, the respondent–non-claimant filed objections under Section 34 of the Act of 1996 on 13.08.2025. During the pendency of the said objections, the respondent–non-claimant voluntarily handed over possession of the property in question to the appellants–claimants on 19.08.2025, which fact came to be recorded in the order-sheet dated 19.08.2025 passed in Execution Proceedings No.02/2025. Subsequently, an application under Section 29A of the Act of 1996 came to be filed before this Court seeking extension of time for passing of the award, which application remained pending for adjudication. In the meanwhile, the objections filed by the respondent–non-claimant under Section 34 of the Act of 1996 came to be allowed by the learned Commercial Court, while holding the award to be without jurisdiction and also having been passed in violation of the timeline prescribed under Section 29A of the Act of 1996.

7. Hence, the present Civil Miscellaneous Appeal has been filed by the appellants-claimants.

Arguments on behalf of the learned counsel for the appellants-claimants:-

8. Mr. Vikas Balia, Sr. Adv. assisted by Mr. Mrigraj Singh Rathore, Mr. Anshuman Mohapatra and Mr. Praveen Singh Rathore, learned counsel appearing for the appellants–claimants, submitted that insofar as the

timeline relating to the mandate of the learned Arbitrator is concerned, the same stood extended with the consent of the parties, inasmuch as, the period from 16.01.2023 to 31.08.2023 was treated to be excluded. It was further submitted that after the appointment of the new Arbitrator on 18.08.2023, the award came to be passed on 31.07.2024, i.e. within a period of one year. Learned Senior counsel thus submitted that once the parties had given their consent for treating the period from 16.01.2023 to 31.08.2023 as excluded for the purpose of computation of limitation, the respondent–non-claimant could not thereafter be permitted to resile from the same. He further submitted that even assuming that such consent could not have been given by the parties, an application under Section 29A of the Act of 1996 had already been filed before this Court seeking extension of time, which application was pending adjudication prior to passing of the order impugned by the learned Commercial Court.

8.1 Learned Senior counsel referred to the judgment passed by the Hon'ble Apex Court in the case of ***C. Velusamy v. K. Indhera, reported in 2026 SCC OnLine SC 142,*** wherein the Hon'ble Apex Court has held that even after passing of the award, an application under Section 29A can be filed and till an order thereupon is passed, the said award would remain unenforceable. However, the award in question cannot be set aside merely on the ground of having been rendered after expiry of the statutory period of 18 months as specified under Section 29A of the Act of 1996.

8.2 As far as the issue of jurisdiction, he submitted that though admittedly a certain part of the dispute fell within the domain of adjudication by the learned Rent Tribunal, however, insofar as the claim

for damages is concerned, the same was beyond the scope of adjudication by the Rent Tribunal and the remedy available to the parties in that regard was before the competent Civil Court.

8.3 Learned Senior counsel submitted that since there was a specific arbitration clause contained in Clause 5(e) of the Sub-Lease Deed, whereby the parties had agreed to settle their disputes through arbitration, the appellants-claimants had rightly approached this Court for appointment of an Arbitrator. He thus asserts that insofar as the claim for damages is concerned, the Rent Tribunal had no jurisdiction and, by no stretch of imagination, it can be said that one part of the dispute would be adjudicated by one authority and the remaining part by another Court. He further submitted that the claim was indivisible and, therefore, the learned Arbitrator had the jurisdiction to adjudicate upon the case in hand.

8.4 Learned Senior counsel further asserted that vide order dated 03.08.2022, a consent order was passed by this Court while deciding the application under Section 11 of the Act of 1996, whereby both the parties had agreed to get their disputes resolved through arbitration. Not only this, even subsequently, while the application under Section 11(5) of the Act of 1996 was being decided, both the parties gave their consent, pursuant whereto the newly appointed Arbitrator proceeded to adjudicate upon the dispute and decided the claim. He further submitted that the respondent himself had submitted to the jurisdiction of the learned Arbitrator by filing a counter-claim and, moreover, no objection whatsoever regarding either the appointment of the Arbitrator or the proceedings being beyond the jurisdiction of the Arbitrator was ever raised by the respondent before this Hon’ble Court while deciding

the application under Section 11 of the Act of 1996 or before the learned Arbitrator by way of an application under Section 16(2) of the Act of 1996. He thus submitted that even thereafter no objection whatsoever was raised with regard to the jurisdiction of the learned Arbitrator to decide the dispute in hand or that the matter was liable to be adjudicated by the Rent Tribunal and, therefore, the respondent had waived his right to raise such objections at the appellate stage under Section 34 of the Act of 1996. He submitted that the doctrine of waiver and acquiescence would squarely apply in the present case.

8.5 Learned Senior counsel further submitted that insofar as Section 34 of the Act of 1996 is concerned, though under Section 34(2)(a)(ii), one of the grounds for setting aside an award is that the arbitration agreement is not valid under the law to which the parties have subjected it, however, the same can be considered and agitated only when such an objection has been raised under Section 16 of the Act of 1996. He submitted that the same is evident from a conjoint reading of Sections 34(2)(a)(ii) and 16(6) of the Act of 1996, which permits a challenge to such objections at the stage of proceedings under Section 34 of the Act of 1996. Put differently, learned Senior Counsel argued that only in a case where an objection regarding the jurisdiction of the learned Arbitral Tribunal has been raised and the same has been decided against the person concerned, can such person take recourse to Section 34(2)(a)(ii) of the Act of 1996, and not otherwise. He further referred to Section 4 of the Act of 1996 to emphasize that once a party has failed to raise any objection, such party shall be deemed to have waived its right to raise objections with regard to the jurisdiction of the learned Arbitrator. He thus submitted that the order impugned dated 25.02.2026 deserves to be quashed and set aside.

8.6 In order to buttress his submissions, learned Senior counsel placed reliance upon the judgments passed by the Hon'ble Apex Court in the following cases:– ***(1)- Union of India v. Pam Development Private Limited,*** reported in (2014) 11 SCC 366; ***(2)- M.P. Rural Road Development Authority & Anr. v. L.G. Chaudhary Engineers & Contractors,*** reported in (2018) 10 SCC 826, ***(3)– Gayatri Project Limited v. Madhya Pradesh Road Development Corporation Limited,*** reported in (2025) 10 SCC 750, ***(4)– Motilal Oswal Financial Services Limited v. Santosh Cordeiro & Anr.,*** reported in (2026) 2 SCC 801, ***(5)- Sweta Construction v. Chhattisgarh State Power Generation Company Limited,*** reported in (2024) 4 SCC 722, ***and (6)- Sanjit Singh Salwan & Ors., v. Sardar Indrajit Singh Salwan & Ors.,*** reported in 2025 SCC OnLine SC 1697.

Arguments on behalf of the learned counsel for the respondent-non-claimant:-

9. *Au contraire*, Mr. Vinish Mittal, along with Ms. Aditi Moad, learned counsel appearing for the respondent-non-claimant, while supporting the order impugned passed by the learned Commercial Court, vehemently asserted that insofar as the issue of jurisdiction is concerned, the same goes to the root of the matter and can be raised at any stage of the proceedings. Learned counsel for the respondent-non-claimant, while candidly admitting that no objection with regard to the jurisdiction of the learned Arbitrator was ever raised during the course of the arbitral proceedings, asserted that such an objection could even be raised at the stage of execution, which, according to him, is evident from the language employed under Section 34(2)(a)(ii) of the Act of 1996. He further submitted that the dispute in question was amenable

to the exclusive jurisdiction of the Rent Tribunal in view of the provisions of the Rajasthan Rent Control Act, 2001. He submitted that as per Section 18 of the Act of 2001, the Rent Tribunal had exclusive jurisdiction over the dispute in hand and, therefore, the award passed by the learned Arbitrator was beyond his jurisdiction.

10. In order to buttress his submissions, learned counsel placed reliance upon the judgments passed by the Hon'ble Apex Court in the cases of ***Booz Allen And Hamilton Inc. v. SBI Home Finance Limited & Ors.,*** reported in **(2011) 5 SCC 532** as well as ***Vidya Drolia & Ors. v. Durga Trading Corporation,*** *reported in* ***(2021) 2 SCC 1,*** while particularly emphasizing the findings recorded in paragraphs 79 and 80 of the latter judgment. Learned counsel further referred to Sections 18 and 29 of the Act of 2001 to emphasize that even the jurisdiction of the Civil Court stands specifically barred under the provisions of the Act of 2001 and, in view of the exclusive jurisdiction vested in the Rent Tribunal, the proceedings initiated for appointment of the Arbitrator, as well as the arbitral proceedings undertaken thereafter, were wholly without jurisdiction.

10.1 Learned counsel for the respondent-non-claimant further asserted that even the order-sheet passed by the learned Arbitrator with regard to exclusion of the period from 16.01.2023 till 31.08.2023, being contrary to the provisions of law, cannot be acted upon. He thus submitted that admittedly the award came to be passed beyond the time prescribed for adjudication of the dispute under Section 29A of the Act of 1996 and, therefore, the award cannot be acted upon and is a nullity, which has rightly been set aside by the learned Commercial Court.

11. He thus prayed for dismissal of the instant appeal preferred by the appellants-claimants.

Analysis & Reasoning:-

12. Prior to embarking upon the validity of the award, the order impugned, as well as the issue relating to jurisdiction, this Court deems it appropriate to frame the following questions for adjudication:–

Question No.1: Whether the dispute in question falls within the domain of the exclusive jurisdiction of the Rent Tribunal?

Question No.2: Whether an objection with regard to arbitrability of the dispute or the jurisdiction of the learned Arbitrator can be permitted to be raised for the first time at the appellate stage under Section 34 of the Act of 1996 or even at the stage of execution, despite no such objection having been raised before the learned Arbitrator under Section 16 of the Act of 1996, and if so whether, in the facts and circumstances of the present case, the doctrine of waiver would apply even with respect to the issue of jurisdiction?

Question No.3: Whether post passing of the arbitral award, the mandate of the learned Arbitrator can be extended under Section 29A of the Act of 1996?

Question No.1:-

12.1 As far as Question No.1 is concerned, the provisions of Sections 18 and 29 of the Rajasthan Rent Control Act, 2001 would be relevant for the answering the same. The Sections are as under:–

> *"**18. Jurisdiction of Rent Tribunal.** (1) Notwithstanding anything contained in any other law for the time being in force, in the areas to which this Act extends only the Rent Tribunal and no Civil Court shall*

have jurisdiction to hear and decide the petitions relating to disputes between landlord and tenant and matters connected therewith and ancillary thereto, filed under the provisions of this Act:

Provided that Rent Tribunal Shall, in deciding such petitions to which provisions contained in Chapters II and III of this Act do not apply, have due regard to the provisions of Transfer of Properties Act, 1882 (Act No. 4 of 1882) the Indian Contract Act, 1872 (Act No. 9 of 1872), or any other substantive law applicable to such matter in the same manner in which such law would have been applied had the dispute been brought before a Civil Court by way of suit:

Provided further that nothing contained in this Act shall he deemed to empower the Rent Tribunal to entertain it petition involving such dispute between landlord and tenant to which provisions of the Rajasthan Public Premises (Eviction of Unauthorised Occupants) Act, 1964 (Act No. 2 of 1965) and the Rajasthan Premises (Requisition and Eviction) Ordinance, 1949 apply.

(2) Where the petition only for recovery of unpaid rent or arrears of rent is filed, the time schedule and procedure enumerated in Sec. 14 shall mutatis mutandis apply to such petition.

(3) Where the petition for recovery of possession is tiled in respect of the premises or tenancies to which the provisions of Chapter II and III of this Act do not apply, the time schedule and procedure enumerated in Sec. 15 shall mutatis mutandis apply to such petition.

(4) A petition shall be instituted before the Rent Tribunal, within the local limits of whose jurisdiction the premises is situated.

***29. Act to have overriding effect.-** The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other Law for the time being in force or in any instrument having effect by virtue of any Law other than this Act."*

12.2 A bare perusal of the aforesaid provisions reveals that insofar as matters covered under the Act of 2001, where the Rent Tribunal is functioning, the jurisdiction of the Civil Court has been specifically barred. The proviso to Section 18(1) further clarifies that even disputes arising under the Transfer of Property Act, 1882, the Indian Contract Act, 1872, or any other substantive law applicable to the matter in

question, shall also be adjudicated by the Rent Tribunal, as if the same were pending before a Civil Court by way of a suit. Section 29 further clarifies that the Act of 2001, being a special enactment, would override the provisions of any other law for the time being in force in the event of any inconsistency therewith.

12.3 A perusal of the claims raised as well as the issues decided by the learned Arbitrator clearly reveals that the dispute in question pertained to termination of tenancy, payment of outstanding rent, and damages. The first two components of the claim would undoubtedly fall within the scope of adjudication by the Rent Tribunal and, insofar as the claim for damages is concerned, the same, being part of the claim arising out of the contractual relationship between the parties under the Indian Contract Act, 1872, would also fall within the scope of adjudication by the Rent Tribunal in view of the proviso to Section 18(1) of the Act of 2001. Thus, the dispute in question was liable to be adjudicated exclusively by the Rent Tribunal and was not capable of adjudication through arbitration in view of the exclusive jurisdiction vested therein.

13. A learned Single Bench of this Court, in the case of ***M/s. Big Shoppers Supermarket Pvt. Ltd. v. M/s. K.M. Trading and Agencies Pvt. Ltd. [S.B. Arbitration Application No.49/2007],*** decided on 29.08.2008, had the occasion to deal with an identical issue, wherein an application under Section 11 of the Act of 1996 had been filed for appointment of an Arbitrator in respect of a dispute falling within the ambit of the Rajasthan Rent Control Act, 2001. This Court, while considering Sections 18 and 29 of the Act of 2001, held that in terms of Section 9 of the Act of 2001, satisfaction of the Rent Tribunal is a *sine qua non* before ordering eviction of a tenant and such satisfaction

of the Rent Tribunal cannot be substituted by the satisfaction recorded by an Arbitrator. The learned Single Bench held as under:–

> *"6. A further look at the scheme of Rent Act demonstrates that as per Section 9 the satisfaction of Rent Tribunal is necessary before ordering eviction of the tenant. The satisfaction of Rent Tribunal cannot be substantiated with that of the satisfaction of Arbitrator.*
>
> *9. I am afraid, the Arbitrator cannot resolve as to whether the respondent landlord is entitled to a decree for eviction or not under Rent Act. It is only the Rent Tribunal, which has jurisdiction to pass the decree for eviction."*

14. In a similar manner, in the case of ***The National Textile Corporation (DP&R) & Anr. v. The Rent Control Appellate Tribunal, Jaipur & Ors. [S.B. Civil Writ Petition No.8296/2009]***, a learned Single Bench of this Court, vide judgment and order dated 13.04.2011, while considering a challenge to the order passed by the Rent Tribunal as affirmed by the Appellate Rent Tribunal vis-à-vis the existence of an arbitration clause in the lease deed, examined the issue of jurisdiction to adjudicate the matter. While considering Sections 18 and 29 of the Rajasthan Rent Control Act, 2001, as well as Section 2(3) of the Act of 1996, the learned Single Bench held that the Arbitration and Conciliation Act, 1996 has not been given overriding effect over any other law and that wherever jurisdiction of arbitration has been expressly or impliedly excluded, the matter cannot be referred to arbitration. The learned Single Bench held as under:–

> *"Bare reading of the aforesaid provision clarifies that the provisions of the Act of 1996 has not been given overriding effect to any other law where jurisdiction of the arbitration has been excluded. If the provisions of section 18 of the Act of 2001 are looked into, a dispute between landlord and tenant is given under exclusive jurisdiction of the Rent Tribunal. Thus, question of repugnance does not exist in the light of section 2(3) of the Act of 1996."*

15. Furthermore, the Hon'ble Apex Court in the case of ***Booz Allen And Hamilton Inc.*** (supra) had the occasion to examine the scope of Sections 8, 11, 16 and 34(2)(b) of the Act of 1996 vis-à-vis the right of trial in a mortgage suit for foreclosure or redemption of mortgaged property by a Civil Court. The Hon'ble Apex Court held that though the dispute in question was covered by an arbitration clause, the same could not be adjudicated by an Arbitrator and was required to be decided by the competent Civil Court, particularly as the reliefs claimed in the suit were not divisible. While dealing with the issue of "arbitrability", the Hon'ble Apex Court observed that certain categories of disputes are non-arbitrable in nature. The Hon'ble Apex Court held as under:–

> *"**36.** The well recognized examples of non-arbitrable disputes are: (i) disputes relating to rights and liabilities which give rise to or arise out of criminal offences; (ii) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody; (iii) guardianship matters; (iv) insolvency and winding up matters; (v) testamentary matters (grant of probate, letters of administration and succession certificate); and (vi) eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes.*
>
> ***37.** It may be noticed that the cases referred to above relate to actions in rem. A right in rem is a right exercisable against the world at large, as contrasted from a right in personam which is an interest protected solely against specific individuals. Actions in personam refer to actions determining the rights and interests of the parties themselves in the subject matter of the case, whereas actions in rem refer to actions determining the title to property and the rights of the parties, not merely among themselves but also against all persons at any time claiming an interest in that property. Correspondingly, judgment in personam refers to a judgment against a person as distinguished from a judgment against a thing, right or status and Judgment in rem refers to a*

> *judgment that determines the status or condition of property which operates directly on the property itself. (Vide: Black's Law Dictionary).*
>
> ***38.*** *Generally and traditionally all disputes relating to rights in personam are considered to be amenable to arbitration; and all disputes relating to rights in rem are required to be adjudicated by courts and public tribunals, being unsuited for private arbitration. This is not however a rigid or inflexible rule. Disputes relating to sub-ordinate rights in personam arising from rights in rem have always been considered to be arbitrable."*

15.1 In the present case, admittedly, under the Rajasthan Rent Control Act, 2001, a tenant enjoys certain statutory protections and can be evicted only on the grounds specified under Section 9 of the Act of 2001 and not otherwise.

16. This, coupled with the language employed under Sections 18 and 29 of the Act of 2001, leaves no manner of doubt that insofar as disputes between landlord and tenant are concerned, including matters ancillary thereto, neither the Civil Court nor any other authority would have jurisdiction to adjudicate upon the same and such disputes are liable to be decided exclusively by the Rent Tribunal in accordance with the provisions of the Act of 2001. Thus, the dispute in question was liable to be adjudicated only by the Rent Tribunal and was not arbitrable. Question No.1 is decided accordingly.

Question No.2:-

17. As far as Question No.2 is concerned, this Court has already held that the dispute in question was non-arbitrable and fell within the exclusive jurisdiction of the Rent Tribunal. However, the further issue which requires consideration is as to whether the respondent-non-claimant, having failed to raise any objection with regard to jurisdiction before the learned Arbitrator under Section 16 of the Act of 1996, can

still be permitted to raise such an objection at the stage of proceedings under Section 34 of the Act of 1996 or at the stage of execution of the award. The Arbitration and Conciliation Act, 1996 is a special enactment enacted with the avowed object of consolidating and amending the law relating to domestic arbitration, international commercial arbitration, enforcement of foreign arbitral awards, as well as conciliation and matters connected therewith or incidental thereto.

18. The Act of 1996 came to be enacted after adoption of the UNCITRAL Model Law on International Commercial Arbitration, 1985 by the United Nations Commission on International Trade Law. India, being a participant to the said Commission, adopted the said provisions with certain modifications and, thereafter, the Arbitration and Conciliation Act, 1996 came to be enacted, repealing the earlier Arbitration Act of 1940. The principal object of the Act of 1996 was to make the arbitral process fair, efficient and capable of meeting the needs of arbitration, while simultaneously minimizing the supervisory role of Courts in arbitral proceedings.

18.1 Before delving into the issue relating to waiver and the scope of challenge to the jurisdiction of the learned Arbitrator, it would be apposite to refer to certain relevant provisions of the Act. Section 4 of the Act of 1996 provides as under:–

> *"**4. Waiver of right to object.**—A party who knows that—*
>
> *(a) any provision of this Part from which the parties may derogate, or*
>
> *(b) any requirement under the arbitration agreement, has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time limit is provided for stating that objection, within that period of time, shall be deemed to have waived his right to so object."*

18.2 Section 11 of the Act of 1996, which deals with the appointment of an Arbitrator, provides as under:–

> *"**11. Appointment of arbitrators.**—(1) A person of any nationality may be an arbitrator, unless otherwise agreed by the parties. (2) Subject to sub-section (6), the parties are free to agree on a procedure for appointing the arbitrator or arbitrators.*
>
> *(3) Failing any agreement referred to in sub-section (2), in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the third arbitrator who shall act as the presiding arbitrator.*
>
> *[(3A) If the appointment procedure in sub-section (3) applies and — (a) a party fails to appoint an arbitrator within thirty days from the receipt of a request to do so from the other party; or (b) the two appointed arbitrators fail to agree on the third arbitrator within thirty days from the date of their appointment, the appointment shall be made, upon request of a party, by 1[the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court];*
>
> *(5) Failing any agreement referred to in sub-section (2), in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator within thirty days from receipt of a request by one party from the other party to so agree the appointment shall be made, upon request of a party, by 1[the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court].*
>
> *(6) Where, under an appointment procedure agreed upon by the parties,—*
>
> > *(a) a party fails to act as required under that procedure; or*
> >
> > *(b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or*
> >
> > *(c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure,*
>
> *a party may request 1[the Supreme Court or, as the case may be, the High Court or any person or institution designated by such*

Court]to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

2[(6A) The Supreme Court or, as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6), shall, notwithstanding any judgment, decree or order of any Court, confine to the examination of the existence of an arbitration agreement.

(6B) The designation of any person or institution by the Supreme Court or, as the case may be, the High Court, for the purposes of this section shall not be regarded as a delegation of judicial power by the Supreme Court or the High Court.]

(7) A decision on a matter entrusted by sub-section (4) or sub-section (5) or sub-section (6) to 3[the Supreme Court or, as the case may be, the High Court or the person or institution designated by such Court is final and no appeal including Letters Patent Appeal shall lie against such decision].

4[(8) The Supreme Court or, as the case may be, the High Court or the person or institution designated by such Court, before appointing an arbitrator, shall seek a disclosure in writing from the prospective arbitrator in terms of sub-section (1) of section 12, and have due regard to—

(a) any qualifications required for the arbitrator by the agreement of the parties; and

(b) the contents of the disclosure and other considerations as are likely to secure the appointment of an independent and impartial arbitrator.]

(9) In the case of appointment of sole or third arbitrator in an international commercial arbitration, 5[the Supreme Court or the person or institution designated by that Court] may appoint an arbitrator of a nationality other than the nationalities of the parties where the parties belong to different nationalities.

6[(10) The Supreme Court or, as the case may be, the High Court, may make such scheme as the said Court may deem appropriate for dealing with matters entrusted by sub-section (4) or sub-section (5) or sub-section (6), to it.]

(11) Where more than one request has been made under sub-section (4) or sub-section (5) or sub-section (6) to the Chief Justices of different High Courts or their designates, 7[different High Courts or their designates, the High Court or its designate to whom the request has been first made] under the relevant sub-section shall alone be competent to decide on the request.

1[(12) (a) Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and sub-section (10) arise in an international commercial arbitration, the reference to the "Supreme Court or, as the case may be, the High Court" in those sub-sections shall be construed as a reference to the "Supreme Court"; and (b) Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and sub-section (10) arise in any other arbitration, the reference to "the Supreme Court or, as the case may be, the High Court" in those sub-sections shall be construed as a reference to the "High Court" within whose local limits the principal Civil Court referred to in clause (e) of sub-section (1) of section 2 is situate, and where the High Court itself is the Court referred to in that clause, to that High Court.]

2[(13) An application made under this section for appointment of an arbitrator or arbitrators shall be disposed of by the Supreme Court or the High Court or the person or institution designated by such Court, as the case maybe, as expeditiously as possible and an endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party.

(14) For the purpose of determination of the fees of the arbitral tribunal and the manner of its payment to the arbitral tribunal, the High Court may frame such rules as may be necessary, after taking into consideration the rates specified in the Fourth Schedule.

Explanation.—For the removal of doubts, it is hereby clarified that this sub-section shall not apply to international commercial arbitration and in arbitrations (other than international commercial arbitration) in case where parties have agreed for determination of fees as per the rules of an arbitral institution.]"

18.3 Section 16 of the Act of 1996, which deals with the competence of the Arbitral Tribunal to rule on its own jurisdiction, provides as under:–

*"**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."

18.4 Section 34 of the Act of 1996, which provides for an application for setting aside an arbitral award, reads as under:–

*"**34. Application for setting aside arbitral award.**—(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).*

(2) An arbitral award may be set aside by the Court only if—

(a) the party making the application 1[establishes on the basis of the record of the arbitral tribunal that]—

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute 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, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

2[Explanation 1.—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[(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.]

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the

application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

1[(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.]"

18.5 A bare perusal of Section 4 of the Act of 1996 reveals that once a party having knowledge that any provision of this part, from which the parties may derogate, or any requirement under the arbitration agreement, has not been complied with, nevertheless proceeds with the arbitration without stating its objection, without undue delay or within the prescribed period of time, such party shall be deemed to have waived its right to raise such objection thereafter. Thus, the Act itself contemplates that in the event of failure to raise an objection within the stipulated time, a deeming fiction of waiver would operate against the party concerned in relation to objections pertaining to jurisdiction or any requirement under the arbitration agreement.

19. Needless to emphasize that the Arbitration and Conciliation Act, 1996 is divided into various Parts. Part I encompasses Sections 2 to 43

and, therefore, all the provisions referred to hereinabove fall within Part I of the Act of 1996. Section 11 of the Act of 1996, which provides for appointment of an Arbitrator, has repeatedly came for consideration before the Hon'ble Apex Court with regard to the scope of adjudication and the extent of powers exercisable at that stage. There existed a cleavage of opinion with respect to the scope of adjudication under Sections 8 and 11 of the Act of 1996, which ultimately came to be settled by the Constitution Bench's judgment of the Hon'ble Apex Court in the case of ***SBP & Company v. Patel Engineering Ltd., reported in (2005) 8 SCC 618***. The Hon'ble Apex Court, while emphasizing that Sections 8 and 11 are complementary in nature, held that under Section 11 of the Act of 1996, the Hon'ble Chief Justice or his designate would necessarily have to decide the question relating to jurisdiction for appointment of an Arbitrator and, therefore, the competence to decide such issue could not be doubted. It was further held that the Hon'ble Chief Justice or his designate would determine what constituted an arbitrable claim, a non-arbitrable claim, and a non-arbitrable subject matter.

20. However, subsequent amendments introduced by way of the Amendment Acts of 2015 and 2019 brought about substantial changes to Section 11 of the Act of 1996. Thereafter, the scope of Section 11 again came up for consideration before the Hon'ble Apex Court and a Three-Judge Bench of the Hon'ble Apex Court in the case of ***Vidya Drolia*** (surpa) held as under:–

> *"**154.** Discussion under the heading* **"Who decides Arbitrability?"** *can be crystallized as under:*
>
> ***154.1.** Ratio of the decision in Patel Engineering Ltd. on the scope of judicial review by the court while deciding an application under Sections 8 or 11 of the Arbitration Act, post the*

amendments by Act 3 of 2016 (with retrospective effect from 23.10.2015) and even post the amendments vide Act 33 of 2019 (with effect from 09.08.2019), is no longer applicable.

154.2. *Scope of judicial review and jurisdiction of the court under Section 8 and 11 of the Arbitration Act is identical but extremely limited and restricted.*

154.3. *The general rule and principle, in view of the legislative mandate clear from Act 3 of 2016 and Act 33 of 2019, and the principle of severability and competence-competence, is that the arbitral tribunal is the preferred first authority to determine and decide all questions of non-arbitrability. The court has been conferred power of "second look" on aspects of non- arbitrability post the award in terms of sub-clauses (i), (ii) or (iv) of Section 34(2)(a) or sub-clause (i) of Section 34(2)(b) of the Arbitration Act.*

154.4. *Rarely as a demurrer the court may interfere at the Section 8 or 11 stage when it is manifestly and ex facie certain that the arbitration agreement is non- existent, invalid or the disputes are non-arbitrable, though the nature and facet of non-arbitrability would, to some extent, determine the level and nature of judicial scrutiny. The restricted and limited review is to check and protect parties from being forced to arbitrate when the matter is demonstrably 'non-arbitrable' and to cut off the deadwood. The court by default would refer the matter when contentions relating to non-arbitrability are plainly arguable; when consideration in summary proceedings would be insufficient and inconclusive; when facts are contested; when the party opposing arbitration adopts delaying tactics or impairs conduct of arbitration proceedings. This is not the stage for the court to enter into a mini trial or elaborate review so as to usurp the jurisdiction of the arbitral tribunal but to affirm and uphold integrity and efficacy of arbitration as an alternative dispute resolution mechanism.*

155. *Reference is, accordingly, answered."*

21. The Hon'ble Apex Court thus held that while deciding an application under Section 11 of the Act of 1996, the Court is required to apply a prima facie test with regard to the existence and validity of the arbitration agreement and then, in cases involving debatable and

disputable facts or where reasonably arguable grounds exist, the parties would be at liberty to approach the Arbitral Tribunal for questioning its jurisdiction as well as the arbitrability of the dispute. It was further clarified that at the stage of proceedings under Section 34 of the Act of 1996, the Court has been conferred a limited power of **"second look"** on the aspect of non-arbitrability after passing of the award. It is thus clear that at the inception, i.e., at the stage of Section 11 of the Act of 1996, the Court would prima facie examine the existence of the arbitration agreement as well as the issue of arbitrability before appointing an Arbitrator and, thereafter, if at all any objection survives with regard to the jurisdiction of the learned Arbitrator or the arbitrability of the dispute, the parties are required to lay such challenge before the learned Arbitral Tribunal itself.

22. Section 16 of the Act of 1996 is an exhaustive provision dealing with the issue of jurisdiction and the competence of the Arbitral Tribunal to rule upon its own jurisdiction. The said provision further stipulates that an objection in this regard is required to be raised at the earliest stage and not later than submission of the statement of defence. However, discretion has also been conferred upon the Arbitral Tribunal to permit such a plea to be raised at a later stage, if sufficient justification exists therefor. Be that as it may, the Arbitral Tribunal has been vested with the authority to decide upon its own jurisdiction while adjudicating an application under Section 16 of the Act of 1996 and, in the event any party remains aggrieved by such determination, a remedy has been provided to challenge the same after passing of the award at the stage of proceedings under Section 34 of the Act of 1996.

23. The principle of Kompetenz/Kompetenz, which is a well-recognized principle of German jurisprudence, forms the bedrock of such power. The Hon'ble Apex Court in the case of ***Chloro Controls (India) Pvt. Ltd. v. Severn Trent Water Purification Inc., reported in JT (2012) 10 SC 187,*** while dealing with the said principle, held that the same has two facets, namely, positive and negative. The positive facet envisages that even where there exists a challenge to the existence or validity of the arbitration agreement, the same would not debar the Arbitral Tribunal from proceeding with the hearing and ruling upon its own jurisdiction and, if the Tribunal retains jurisdiction and ultimately renders an award, the aggrieved party would remain free to challenge the same under Section 34 of the Act of 1996. The negative facet of the principle postulates that the Arbitrators are entitled to be the first authority to determine questions relating to jurisdiction, which determination would thereafter be subject to judicial review by the Court at the stage of enforcement or challenge to the arbitral award.

24. This, coupled with the provisions of Section 34 of the Act of 1996, clearly reveals that, as held by the Hon'ble Apex Court in the case of **Vidya Drolia** (supra), the power under Section 34 is essentially in the nature of a "second look" on the aspect of non-arbitrability after passing of the award and that the primary objection in this regard is required to be raised before the Arbitral Tribunal itself. The expression "second look" assumes considerable significance, particularly in light of the language employed under Sections 34(2)(a)(ii) and 34(2)(b)(i) of the Act of 1996. A perusal of the said provisions reveals that an arbitral award may be set aside if the arbitration agreement itself is not valid under the law to which the parties have subjected it or under the law

for the time being in force, or where the subject matter of the dispute is not capable of settlement by arbitration under the law for the time being in force.

25. Thus, where an objection is raised before the Arbitral Tribunal under Section 16 of the Act of 1996 with regard to the jurisdiction of the Tribunal to undertake arbitral proceedings or concerning the existence or validity of the arbitration agreement itself, and an order is passed thereupon, the aggrieved party would thereafter be entitled to raise such objections at the stage of proceedings under Section 34 in terms of the aforesaid provisions. However, in the absence of any such objection having been raised before the Arbitral Tribunal at the appropriate stage, the party concerned cannot ordinarily be permitted to raise such objections for the first time at a subsequent stage, particularly in view of the doctrine of waiver embodied under Section 4 of the Act of 1996.

26. This Court shall now proceed to consider the various judgments relied upon by learned counsel for the respective parties, as well as other pronouncements of the Hon'ble Apex Court on the issue in question. As far as the judgment in the case of ***Vidya Drolia*** (supra) is concerned, considerable reliance has been placed thereupon by learned counsel for the respondent-non-claimant; paragraphs 79 and 80 of the said judgment, upon which heavy reliance has been placed by learned counsel for the respondent-non-claimant, are reproduced as under:–

> *"**79.** Landlord-tenant disputes governed by the Transfer of Property Act are arbitrable as they are not actions in rem but pertain to subordinate rights in personam that arise from rights in rem. Such actions normally would not affect third-party rights or have erga omnes affect or require centralized adjudication. An award passed deciding landlord-tenant disputes can be executed*

> *and enforced like a decree of the civil court. Landlord-tenant disputes do not relate to inalienable and sovereign functions of the State. The provisions of the Transfer of Property Act do not expressly or by necessary implication bar arbitration. Transfer of Property Act, like all other Acts, has a public purpose, that is, to regulate landlord- tenant relationships and the arbitrator would be bound by the provisions, including provisions which enure and protect the tenants.*
>
> ***80.*** *In view of the aforesaid, we overrule the ratio laid down in Himangni Enterprises and hold that landlord-tenant disputes are arbitrable as the Transfer of Property Act does not forbid or foreclose arbitration. However, landlord-tenant disputes covered and governed by rent control legislation would not be arbitrable when specific court or forum has been given exclusive jurisdiction to apply and decide special rights and obligations. Such rights and obligations can only be adjudicated and enforced by the specified court/forum, and not through arbitration."*

26.1 The emphasis on adjudication of landlord-tenant rights by the special Courts/Tribunals created under the statute is no longer res integra and this Court has already held, while deciding Question No.1, that the dispute in question was non-arbitrable. However, the question which now falls for consideration is as to at what stage the issue of arbitrability can be raised. For that purpose, it would be relevant to refer to certain observations made by the Hon'ble Apex Court in the case of ***Vidya Drolia*** (supra), which read as under:–

> *"**129.** Principles of competence-competence have positive and negative connotations. As a positive implication, the arbitral tribunals are declared competent and authorised by law to rule as to their jurisdiction and decide non-arbitrability questions. In case of expressed negative effect, the statute would govern and should be followed. Implied negative effect curtails and constrains interference by the court at the referral stage by necessary implication in order to allow the arbitral tribunal to rule as to their jurisdiction and decide non-arbitrability questions. As per the negative effect, courts at the referral stage are not to decide on merits, except when permitted by the*

legislation either expressly or by necessary implication, such questions of non-arbitrability. Such prioritisation of arbitral tribunal over the courts can be partial and limited when the legislation provides for some or restricted scrutiny at the 'first look' referral stage. We would, therefore, examine the principles of competence-competence with reference to the legislation, that is, the Arbitration Act.

130. *Section 16(1) of the Arbitration Act accepts and empowers the arbitral tribunal to rule on its own jurisdiction including a ruling on the objections, with respect to all aspects of non-arbitrability including validity of the arbitration agreement. A party opposing arbitration, as per sub-section (2), should raise the objection to jurisdiction of the tribunal before the arbitral tribunal, not later than the submission of statement of defence. However, participation in the appointment procedure or appointing an arbitrator would not preclude and prejudice any party from raising an objection to the jurisdiction. Obviously, the intent is to curtail delay and expedite appointment of the arbitral tribunal. The clause also indirectly accepts that appointment of an arbitrator is different from the issue and question of jurisdiction and non-arbitrability. As per sub-section (3), any objection that the arbitral tribunal is exceeding the scope of its authority should be raised as soon as the matter arises. However, the arbitral tribunal, as per sub-section (4), is empowered to admit a plea regarding lack of jurisdiction beyond the periods specified in sub-section (2) and (3) if it considers that the delay is justified. As per the mandate of sub-section (5) when objections to the jurisdiction under sub-sections (2) and (3) are rejected, the arbitral tribunal can continue with the proceedings and pass the arbitration award. A party aggrieved is at liberty to file an application for setting aside such arbitral award under Section 34 of the Arbitration Act. Sub-section (3) to Section 8 in specific terms permits an arbitral tribunal to continue with the arbitration proceeding and make an award, even when an application under sub-section (1) to Section 8 is pending consideration of the court/forum. Therefore, pendency of the judicial proceedings even before the court is not by itself a bar for the arbitral tribunal to proceed and make an award. Whether the court should stay arbitral proceedings or appropriate deference by the arbitral*

tribunal are distinctly different aspects and not for us to elaborate in the present reference.

131. *Section 34 of the Act is applicable at the third stage post the award when an application is filed for setting aside the award. Under Section 34, an award can be set aside – (i) if the arbitration agreement is not valid as per law to which the party is subject; (ii) if the award deals with the disputes not contemplated by or not falling within the submission to arbitration, or contains a decision on the matter beyond the scope of submission to arbitration; and (iii) when the subject matter of the dispute is not capable of settlement by arbitration under the law for the time being in force. Thus, the competence - competence principle, in its negative effect, leaves the door open for the parties to challenge the findings of the arbitral tribunal on the three issues. The negative effect does not provide absolute authority, but only a priority to the arbitral tribunal to rule the jurisdiction on the three issues. The courts have a 'second look' on the three aspects under Section 34 of the Arbitration Act.*

132. *The courts at the referral stage do not perform ministerial functions. They exercise and perform judicial functions when they decide objections in terms of Sections 8 and 11 of the Arbitration Act. Section 8 prescribes the courts to refer the parties to arbitration, if the action brought is the subject of an arbitration agreement, unless it finds that prima facie no valid arbitration agreement exists. Examining the term 'prima facie', in Nirmala J. Jhala v. State of Gujarat and Another,69 this Court had noted:*

> *"48. A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the case were [to be] believed. While determining whether a prima facie case had been made out or not the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence."*

134. *Prima facie examination is not full review but a primary first review to weed out manifestly and ex facie non-existent and invalid arbitration agreements and non-arbitrable disputes. The*

prima facie review at the reference stage is to cut the deadwood and trim off the side branches in straight forward cases where dismissal is barefaced and pellucid and when on the facts and law the litigation must stop at the first stage. Only when the court is certain that no valid arbitration agreement exists or the disputes/subject matter are not arbitrable, the application under Section 8 would be rejected. At this stage, the court should not get lost in thickets and decide debatable questions of facts. Referral proceedings are preliminary and summary and not a mini trial. This necessarily reflects on the nature of the jurisdiction exercised by the court and in this context, the observations of B.N. Srikrishna, J. of 'plainly arguable' case in Shin-Etsu Chemical Co. Ltd. are of importance and relevance. Similar views are expressed by this Court in Vimal Kishore Shah wherein the test applied at the pre-arbitration stage was whether there is a "good arguable case" for the existence of an arbitration agreement.

138. *In the Indian context, we would respectfully adopt the three categories in Boghara Polyfab Private Limited. The first category of issues, namely, whether the party has approached the appropriate High Court, whether there is an arbitration agreement and whether the party who has applied for reference is party to such agreement would be subject to more thorough examination in comparison to the second and third categories/issues which are presumptively, save in exceptional cases, for the arbitrator to decide. In the first category, we would add and include the question or issue relating to whether the cause of action relates to action in personam or rem; whether the subject matter of the dispute affects third party rights, have erga omnes effect, requires centralized adjudication; whether the subject matter relates to inalienable sovereign and public interest functions of the State; and whether the subject matter of dispute is expressly or by necessary implication non-arbitrable as per mandatory statue(s). Such questions arise rarely and, when they arise, are on most occasions questions of law. On the other hand, issues relating to contract formation, existence, validity and non-arbitrability would be connected and intertwined with the issues underlying the merits of the respective disputes/claims. They would be factual and disputed and for the arbitral tribunal to decide."*

26.2 A bare perusal of the aforesaid paragraphs reveals that insofar as the issue of non-arbitrability of the dispute is concerned, a prima facie examination thereof is required to be undertaken by the High Court itself at the pre-reference stage while deciding an application under Section 11 of the Act of 1996 and, thereafter, any further objection in this regard is required to be raised before the Arbitral Tribunal under Section 16 of the Act of 1996. Section 34 constitutes the third stage in the statutory scheme and operates in sequence to the second stage, namely, adjudication of objections under Section 16 of the Act of 1996. This appears to be the reason why the Hon'ble Apex Court, while describing the scope of powers under Section 34 of the Act of 1996, employed the expression "second look" with regard to the objections so raised and not a "first look". In other words, where the parties have waived their right to raise objections at the stages contemplated under Sections 11 and 16 of the Act of 1996, they would ordinarily stand precluded from raising such objections for the first time under Section 34 of the Act of 1996. The aforesaid principle of waiver is also in consonance with the provisions contained under Section 4 of the Act of 1996.

27. Thus, the judgment passed by the Hon'ble Apex Court in the case of **Vidya Drolia** (supra) is of limited assistance to the respondent-non-claimant in the facts of the present case. Not only this, to a certain extent, the observations made in **Vidya Drolia** (supra) came to be explained by the Constitution Bench of the Hon'ble Apex Court in the case of ***In Re: Interplay between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899, reported in (2024) 6 SCC 1***. The Hon'ble Apex Court observed that the judgment in **Vidya Drolia** (supra) had proceeded on

the assumption that Section 11(6A) of the Act of 1996 stood omitted, whereas in fact no notification bringing such omission into force had been issued by the Central Government and, therefore, Section 11(6A) continued to remain operative. The Hon'ble Apex Court held as under:–

> *"**162.** Vidya Drolia[3] proceeds on the presumption that Section 11(6-A) was effectively omitted from the statute books by the 2019 Amendment Act. This is also reflected in the conclusion arrived at by the Court, as is evident from the following extract:*
>
> > *"154.... 154.1. Ratio of the decision in Patel Engg. on the scope of judicial review by the Court while deciding an application under Sections 8 or 11 of the Arbitration Act, post the amendments by Act 3 of 2016 (with retrospective effect from 23-10-2015) and even post the amendments vide Act 33 of 2019 (with effect from 9-8-2019), is no longer applicable." (emphasis supplied).*
>
> ***163.** We are of the opinion that the above premise of the Court in Vidya Drolia[3] is erroneous because the omission of Section 11(6-A) has not been notified and, therefore, the said provision continues to remain in full force. Since Section 11(6-A) continues to remain in force, pending the notification of the Central Government, it is incumbent upon this Court to give true effect to the legislative intent..*
>
> ***164.** The 2015 Amendment Act has laid down different parameters for judicial review under Section 8 and Section 11. Where Section 8 requires the Referral Court to look into the prima facie existence of a valid arbitration agreement, Section 11 confines the Court's jurisdiction to the examination of the existence of an arbitration agreement. Although the object and purpose behind both Sections 8 and 11 is to compel parties to abide by their contractual understanding, the scope of power of the Referral Courts under the said provisions is intended to be different. The same is also evident from the fact that Section 37 of the Arbitration Act allows an appeal from the order of an Arbitral Tribunal refusing to refer the parties to arbitration under Section 8, but not from Section 11. Thus, the 2015 Amendment Act has legislatively overruled the dictum of Patel Engg. 129 where it was held that Section 8 and Section 11 are complementary in*

nature. Accordingly, the two provisions cannot be read as laying down a similar standard..

165. *The legislature confined the scope of reference under Section 11(6-A) to the examination of the existence of an arbitration agreement. The use of the term "examination" in itself connotes that the scope of the power is limited to 9 a prima facie determination. Since the Arbitration Act is a self-contained code, the requirement of "existence" of an arbitration agreement draws effect from Section 7 of the Arbitration Act. In Duro Felguera 132, this Court held that the Referral Courts only need to consider one aspect to determine the existence arbitration agreement which provides for arbitration pertaining to the disputes of an arbitration agreement whether the underlying contract contains an which have arisen between the parties to the agreement. Therefore, the scope of examination under Section 11(6-A) should be confined to the existence of requirement of formal validity such as the requirement that the agreement be in of an arbitration agreement on the basis of Section 7. Similarly, the validity of an arbitration agreement, in view of Section 7, should be restricted to the competence by leaving the issue of substantive existence and validity of an writing. This interpretation also gives true effect to the doctrine of competence. accordingly clarify the position of law laid down in Vidya Drolia' in the context arbitration agreement to be decided by Arbitral Tribunal under Section 16. We d of Section 8 and Section 11 of the Arbitration Act..”*

27.1 Even otherwise, going by what has been laid down in the judgment of **Vidya Drolia** (supra), it is evident that the ratio of the said judgment principally concerns the scope of examination regarding arbitrability at the pre-reference stage, namely, the interplay between Sections 8 and 11 of the Act of 1996. The said judgment does not specifically deal with the doctrine or concept of waiver in the context of failure to raise objections under Section 16 of the Act of 1996.

28. As far as the doctrine of waiver under the Act of 1996 is concerned, there exists a catena of judgments of the Hon’ble Apex

Court dealing with the said principle. Reference in this regard may be made to the judgment of the Hon'ble Apex Court in the case of ***Bharat Sanchar Nigam Limited & Anr. v. Motorola India Private Limited,*** *reported in* ***(2009) 2 SCC 337***. The Hon'ble Apex Court, while dealing with Section 4 of the Act of 1996, held as under:–

> *"**39.** Pursuant to section 4 of the Arbitration and Conciliation Act, 1996, a party who knows that a requirement under the arbitration agreement has not been complied with and still proceeds with the arbitration without raising an objection, as soon as possible, waives their right to object. The High Court had appointed an arbitrator in response to the petition filed by the appellant. At this point, the matter was closed unless further objections were to be raised. If further objections were to be made after this order, they should have been made prior to the first arbitration hearing. But the appellant had not raised any such objections. The appellant therefore had clearly failed to meet the stated requirement to object to arbitration without delay. As such their right to object is deemed to be waived."*

28.1 The Hon'ble Apex Court held that where a party, despite being fully aware that the requirements under the Arbitration and Conciliation Act, 1996 had not been complied with, nevertheless proceeds with the arbitral proceedings without raising any objection, such party would be deemed to have waived its right to raise such objection at any subsequent stage of the proceedings.

29. The Hon'ble Apex Court thereafter, in the case of ***Booz Allen And Hamilton Inc.*** (supra), while dealing extensively with Sections 8, 11 and 16 of the Act of 1996, elaborately considered the scope and ambit of the aforesaid provisions. The Hon'ble Apex Court, while framing various questions for adjudication, held that where a party submits itself to the jurisdiction of the Court concerned and fails to file an application under Section 8 of the Act of 1996 at the appropriate stage, such party would be deemed to have waived its right to subsequently

challenge the jurisdiction of the Court concerned. The Hon'ble Apex Court held as under:–

> *"**29.** Though section 8 does not prescribe any time limit for filing an application under that section, and only states that the application under section 8 of the Act should be filed before submission of the first statement on the substance of the dispute, the scheme of the Act and the provisions of the section clearly indicate that the application thereunder should be made at the earliest. Obviously, a party who willingly participates in the proceedings in the suit and subjects himself to the jurisdiction of the court cannot subsequently turn round and say that the parties should be referred to arbitration in view of the existence of an arbitration agreement. Whether a party has waived his right to seek arbitration and subjected himself to the jurisdiction of the court, depends upon the conduct of such party in the suit."*

29.1 Though the provision under consideration in the aforesaid case was Section 8 of the Act of 1996 and the principle was applied in the converse situation, namely, where a party, having waived its right to seek arbitration, was held bound by such waiver, however the underlying doctrine of waiver would equally apply to the facts of the present case.

30. The Hon'ble Apex Court thereafter, in the case of ***Union of India v. Pam Development Private Limited*** *(supra)*, while dealing with a construction agreement and the scope of arbitral proceedings arising therefrom, held as under:–

> *"**18.** In our opinion, the High Court has correctly come to the conclusion that the appellant having failed to raise the plea of jurisdiction before the Arbitral Tribunal cannot be permitted to raise for the first time in the Court. Earlier also, this Court had occasion to consider a similar objection in Bharat Sanchar Nigam Limited and another versus Motorola India Private Limited [(2009) 2 SCC 337]. Upon consideration of the provisions contained in Section 4 of the Arbitration Act, 1996, it has been held as follows:*

> *"39. Pursuant to section 4 of the Arbitration and Conciliation Act, 1996, a party which knows that a requirement under the arbitration agreement has not been complied with and still proceeds with the arbitration without raising an objection, as soon as possible, waives their right to object. The High Court had appointed an arbitrator in response to the petition filed by the appellants (sic respondent). At this point, the matter was closed unless further objections were to be raised. If further objections were to be made after this order, they should have been made prior to the first arbitration hearing. But the appellants had not raised any such objections. The appellants therefore had clearly failed to meet the stated requirement to object to arbitration without delay. As such their right to object is deemed to be waived."*

30.1 The Hon'ble Apex Court thus referred to Section 4 of the Act of 1996 and held that where a party fails to raise any objection with regard to the arbitral proceedings being undertaken and participates therein without protest, such party would thereafter be estopped from subsequently raising objections in that regard, in view of the doctrine of waiver and estoppel.

31. The Hon'ble Apex Court thereafter, in the case of ***M.P. Rural Road Development Authority & Anr. v. L.G. Choudhary Engineers & Contractors*** *(supra),* while considering the provisions of the M.P. Arbitration Act, held that even where there exists an expressed statutory bar against undertaking arbitration otherwise than in accordance with the provisions of the State enactment, if arbitral proceedings are nevertheless initiated under the Central Act and no objection in that regard is raised at the appropriate stage, the non-claimant would be estopped from subsequently raising such objection

and the arbitral award cannot be annulled on that ground alone. The Hon'ble Apex Court held as under:–

> *"**17.** We do not express any opinion on the applicability of the State Act where award has already been made. In such cases if no objection to the jurisdiction of the arbitration was taken at relevant stage, the award may not be annulled only on that ground."*

32. The Hon'ble Apex Court in the case of ***Quippo Construction Equipment Limited v. Janardan Nirman Private Limited,*** *reported in* ***(2020) 18 SCC 277,*** while dealing with the provisions of Sections 4, 16 and 34 of the Act of 1996 in the context of an agreement relating to hiring of infrastructure development equipment, held as under:–

> *"**24.** It was possible for the respondent to raise submissions that arbitration pertaining to each of the agreements be considered and dealt with separately. It was also possible for him to contend that in respect of the agreement where the venue was agreed to be at Kolkata, the arbitration proceedings be conducted accordingly. Considering the facts that the respondent failed to participate in the proceedings before the Arbitrator and did not raise any submission that the Arbitrator did not have jurisdiction or that he was exceeding the scope of his authority, the respondent must be deemed to have waived all such objections."*

33. The Hon'ble Apex Court thereafter, in the case of ***Sweta Construction v. Chhattisgarh State Power Generation Company Limited*** *(supra),* while again dealing with the provisions of the M.P. State Arbitration Act vis-à-vis Section 34 of the Act of 1996, held as under:–

> *"**18.** We are also of the view that in particular facts of the present case, the position is even more gross because when the appellant claimed arbitration, the respondent accepted invocation of arbitration, suggested a panel of Arbitrators, the appellant chose one of the Arbitrators out of the two suggested and the Arbitrator was so appointed as the sole Arbitrator. Thus, the arbitration proceedings commenced in pursuance to the acts of the respondent and it cannot be permitted to get away to say that the whole*

> *process was gone through because of some misconception or inappropriate legal advice. Arbitration by consent is always possible. The mode and manner of conduct of arbitration is possible and how those arbitration proceedings would be governed is also a matter of consent. If at all there were any rights of the respondent to have claimed arbitration under the Adhiniyam, that right was never exercised or waived. The respondent cannot be permitted to approbate and reprobate and that too in arbitration proceedings and that too in dispute or resolution through the method of arbitration defeating the very purpose of an alternative dispute resolution to arbitration as an expeditious remedy."*

33.1 The Hon'ble Apex Court specifically observed that once the respondent-non-claimant had accepted the jurisdiction of the Arbitral Tribunal, such party could not thereafter be permitted to approbate and reprobate during the course of arbitral proceedings, as the same would defeat the very object of alternative dispute resolution through arbitration, which is intended to provide an expeditious remedy. The Hon'ble Apex Court took into consideration the fact that the respondent-non-claimant had accepted the panel of Arbitrators and, having participated in the arbitral proceedings after commencement thereof without raising any objection, had consequently waived its right to challenge the same at a subsequent stage.

34. The Hon'ble Apex Court recently, in the case of ***Gayatri Project Limited v. Madhya Pradesh Road Development Corporation Limited*** *(supra)*, while again considering the interplay between Sections 11, 16 and 34 of the Act of 1996, framed two questions for adjudication in paragraph 25 of the judgment and held that where no application under Section 16 of the Act of 1996 has been filed challenging the jurisdiction of the learned Arbitrator, the respondent-non-claimant would be precluded from subsequently laying a challenge to the same at a later stage. The Hon'ble Apex Court held as under:–

> *"**64.** What emerges from the foregoing is that although Lion Engineering (supra) affirms that a plea of lack of jurisdiction, being a question of law, may be raised for the first time under Section 34 of the Act, 1996, yet such a plea is nevertheless subject to the waiver as held in Pam Development (supra). Furthermore, as per Gas Authority of India (supra), such a plea may only be entertained if the party demonstrates a strong and sufficient reason for not raising it before the arbitral tribunal. However, L.G. Chaudhary (II) (supra) makes it clear that a failure to raise the issue of applicability of the MP Act, 1983 at the appropriate stage cannot be regarded as a sufficient reason, and therefore the plea cannot be permitted at the stage of Section 34 proceedings."*

34.1 The Hon'ble Apex Court emphasized that though a plea pertaining to lack of jurisdiction, being a pure question of law, may in certain circumstances be permitted to be raised for the first time under Section 34 of the Act of 1996, nevertheless such a plea would remain subject to the doctrine of waiver. The Hon'ble Apex Court further held that such a plea can be entertained only where the party concerned is able to demonstrate strong and sufficient reasons for not having raised the objection earlier before the Arbitral Tribunal.

35. The Hon'ble Apex Court thereafter, in the case of ***Sanjit Singh Salwan & Ors. v. Sardar Indrajit Singh Salwan & Ors.*** *(supra)*, while dealing with the doctrines of estoppel and waiver in arbitral proceedings and placing heavy reliance upon the judgment of the Hon'ble Apex Court in the case of ***Dhiyan Singh v. Jugal Kishore,*** *reported in* ***(1952) 1 SCC 184,*** held that even where arbitral proceedings are alleged to be without jurisdiction, the issue of invalidity of the award, though involving a question of law, cannot be considered *de hors* the conduct of the parties. The Hon'ble Apex Court further held that where the parties have consciously waived their right to challenge the jurisdiction of the Arbitral Tribunal and have participated in the

proceedings without objection, they would remain bound by their conduct and cannot subsequently be permitted to wriggle out of the same. The Hon'ble Apex Court held as under:–

> *"**17.** We would now deal with the contention of the respondents that the award as passed by the sole arbitrator was a nullity since it dealt with issues that fell within the purview of Section 92 of the Code. The invalidity of the award could thus be set up at any stage to prevent its execution and that there could be no estoppel against law. This plea as raised by the respondents found favour with the Commercial Court as well as the High Court.*
>
> *The contention though attractive cannot enable the respondents the surmount the equitable hurdle of estoppel. Having lulled the appellants in having the disputes resolved through arbitration and thereafter seeking disposal of their appeal on the strength of the said award, the respondents are definitely estopped from now setting up its invalidity. The issue is more about estoppel by conduct and election rather than estoppel in law.*
>
> *In Dhiyan Singh and another v. Jugal Kishore and another, AIR 1952 SC 145, a family dispute in relation to certain ancestral and self-acquired properties was sought to be resolved through arbitration. Before the Courts it was urged that not only had the arbitrator travelled beyond the terms of his reference by awarding absolute interest in the property to one party when she had limited interest therein, it was also urged that on factual aspects also he was incorrect. It was however found that the other party had accepted the award and by such conduct had induced the former party from parting with a share in her property.*
>
> *Vivian Bose, J. (as his Lordship then was) held as under:*
>
> > *"It was urged, among other things, that the arbitrator had travelled beyond the terms of his reference in awarding Mst. Mohan Dei an absolute interest. It was also urged that even if Brijlal was bound, his son Kishan Lal, who did not claim through him but who had an independent title as reversioner to Shanker Lal, would not be bound, and it was contended that if Kishan Lal was not bound, the plaintiffs would not be either. **But we need not examine these points because we do not need to proceed on the binding nature of***

the award. Even if the award be invalid we are of the opinion that the plaintiffs' claim is completely answered by the plea of estoppel.

Now it can be conceded that before an estoppel can arise, there must be, first, a representation of an existing fact as distinct from a mere promise de futuro made by one party to the other; second, that the other party, believing it, must have been induced to act on the faith of it; and third, that he must have so acted to his detriment.

It is true that in one sense a question of title is one of law and it is equally true that there can be no estoppel on a question of law. But every question of law must be grounded on facts and when Brijlal's conduct is analysed it will be found to entail an assertion by him that he admitted and recognised facts which would in law give Mst. Mohan Dei an absolute interest in the lands awarded to her. It was because of that assertion of fact, namely, his recognition and admission of the existence of facts which would give Mst. Mohan Dei an absolute interest, that she was induced to part with about one-third of the property to which Brijlal, on a true estimate of the facts as now known, had no right. There can be no doubt that she acted to her detriment and there can, we think, be equally no doubt that she was induced to do so on the faith of Brijlal's statements and conduct which induced her to believe that he accepted all the implications of the award. But in any event, we are clear that Brijlal would have been estopped. The nature of the dispute and the description of it given in the award show that there was considerable doubt, and certainly much dispute, about the true state of affairs. ***Even if the arbitrator was wholly wrong and even if he had no power to decide as he did, it was open to both sides to accept the decision and by their acceptance recognise the existence of facts which would in law give the other an absolute estate in the properties they agreed to divide among themselves and did divide. That, in our opinion, is a representation of an existing fact or set***

of facts. Each would consequently be estopped as against the other and Brijlal in particular would have been estopped from denying the existence of facts which would give Mst. Mohan Dei an absolute interest in the suit property."

(Emphasis supplied by us)

18. *In our view, the ratio of the aforesaid decision is a complete answer to the defence raised by the respondents on the plea of estoppel against law. It is only because the respondents consented to have the disputes resolved through the arbitration of Mr. Vipin Sodhi that the compromise deed was executed and the respondents' appeal was disposed of accordingly. The appellants thereafter acted in accordance with the terms of the consent deed and altered their position to their detriment. They took steps to withdraw the First Information Report and also parted with substantial amounts as required by the consent deed. All these facts are sufficient to hold that after the parties accepted the consent deed, the appellants acted in accordance with its terms and altered their position. The respondents thus by their conduct of accepting the compromise deed based on the award of the arbitrator are now precluded from questioning its validity. As held in Dhiyan Singh (supra),* ***the issue of invalidity of the award, as a question of law, cannot be considered de hors the conduct of parties.*** *In these facts, the ratio of decisions relied upon by the respondents do not further their case. Hence, this contention of the respondents fails.*

19. *We therefore find that on the doctrine of estoppel by conduct and election the respondents cannot be permitted to now raise a plea that the compromise deed based on the award dated 30.12.2022 was a nullity in view of the provisions of Section 92 of the Code. On this count, we do not deem it necessary to go into the legality of the award dated 30.12.2022 as was done by the Courts in the impugned orders."*

36. The Hon'ble Apex Court recently, in the case of ***Motilal Oswal Financial Services Limited v. Santosh Cordeiro & Anr.*** *(supra)*, while dealing with the provisions of Sections 8, 11 and 16 of the Act of 1996 and considering the judgments in ***Vidya Drolia*** (supra) as well as ***In Re: Interplay between Arbitration Agreements under the***

Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899 *(supra),* held that at the stage of proceedings under Section 11 of the Act of 1996, the primary consideration before the Court is confined to the existence of the arbitration agreement and that a laborious or contested inquiry regarding the validity thereof cannot ordinarily be undertaken at such stage.

37. The Hon'ble Apex Court further observed that mere creation of a special forum or substitution of the Civil Court by a statutory forum may not, by itself, be sufficient to infer implicit non-arbitrability and that conferment of jurisdiction upon a particular Court or Tribunal may not constitute the decisive test for determining whether arbitration is impliedly barred. The Hon'ble Apex Court further held that, in terms of Section 16 of the Act of 1996, it is for the Arbitral Tribunal to decide questions pertaining to its jurisdiction and that such determination is in consonance with the doctrine of Kompetenz/Kompetenz, as explained in the judgment rendered in **In Re: Interplay between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899** (supra).

38. After culling out the ratio laid down in the judgments referred to hereinabove, it is clear that insofar as the issue relating to the jurisdiction of the Arbitral Tribunal is concerned, the party concerned is required to raise objections at two distinct stages, namely, under Sections 11 and 16 of the Act of 1996. At the stage of adjudication under Section 11, the scope of examination is limited and, in cases involving disputed questions, the Court would ordinarily leave the issue to be adjudicated by the Arbitral Tribunal itself in exercise of powers under Section 16 of the Act of 1996. However, irrespective of the

contention that the arbitral proceedings were without jurisdiction, if no objection is raised under Section 16 of the Act of 1996, or even before the learned Arbitrator upon submission of the statement of defence or later, the party concerned cannot be permitted to raise such objections for the first time at a later stage under Section 34 of the Act of 1996. The same is evident from the ratio laid down in the judgments referred to hereinabove.

39. Once a party has participated in the arbitral proceedings without raising any objection and has, in fact, actively participated therein, the issue regarding invalidity of the award cannot be permitted to raise at a subsequent stage, including in proceedings under Section 34 of the Act of 1996. Such a party would remain bound by the principles of estoppel, waiver and the doctrine of election. The same has been held in clear terms by the Hon'ble Apex Court in the cases of ***Sweta Construction v. Chhattisgarh State Power Generation Company Limited*** *(supra)****, Sanjit Singh Salwan & Ors. v. Sardar Indrajit Singh Salwan & Ors.*** *(supra) and* ***Gayatri Project Limited v. Madhya Pradesh Road Development Corporation Limited*** *(supra).*

40. Furthermore, Section 4 of the Act of 1996 casts an additional embargo upon a party, such as the respondent-non-claimant in the present case, from raising such objections at a subsequent stage, namely, in proceedings under Section 34 of the Act of 1996. Needless to emphasize that Section 4 incorporates a deeming fiction of waiver and, therefore, such objections cannot be permitted to raise at the stage of Section 34 of the Act of 1996 as well. The same stands fortified by the judgment of the Hon'ble Apex Court in the case of ***Union of India v. Pam Development Private Limited*** (supra).

41. Coming to the facts of the present case, not only the respondent-non-claimant gave consent to the appointment of the learned Arbitrator vide order dated 03.08.2022, but subsequently also gave consent when a new Arbitrator came to be appointed in consonance with Section 11(5) of the Act of 1996. This coupled with the fact that the respondent-non-claimant itself submitted to the jurisdiction of the learned Arbitrator by filing a counter-claim and seeking adjudication of the dispute before the Arbitral Tribunal. Throughout the arbitral proceedings, the respondent-non-claimant never raised any objection with regard to the jurisdiction of the learned Arbitrator. It was only after its counter-claim came to be rejected and the claims of the appellants-claimants were allowed then the respondent-non-claimant, as an afterthought, raised an objection regarding jurisdiction for the first time before the learned Commercial Court while filing an application under Section 34 of the Act of 1996.

42. What is further relevant is that even while filing the application under Section 34 of the Act of 1996, the respondent-non-claimant did not dispute the existence of the arbitration agreement providing for settlement of disputes between the parties through arbitration, nor was any allegation was made that the agreement had been executed under force, coercion or undue influence at the instance of the appellants-claimants. This, coupled with the fact that no objection whatsoever was ever raised before the learned Arbitrator in consonance with Section 16 of the Act of 1996, clearly disentitles the respondent-non-claimant from now taking a complete somersault and questioning the very jurisdiction of the learned Arbitrator, to whose jurisdiction the respondent-non-claimant had himself consciously submitted by filing a counter-claim and seeking adjudication thereof. Such conduct also compelled the

appellants-claimants to participate in the arbitral proceedings and incur the costs of arbitration.

43. At this stage, the respondent-non-claimant cannot be permitted to take a complete volte-face and raise an objection with regard to the jurisdiction of the learned Arbitrator. The same is clearly barred in view of the provisions of Section 4 of the Act of 1996, as well as the doctrine of waiver, which squarely applies to the facts of the present case against the respondent-non-claimant. The Arbitration Act, 1996 being a special Act, the issue with regard to raising objection relating to jurisdiction has been specifically dealt with under the provisions of the Act itself, as noticed hereinabove. Thus, in case no objection with regard to jurisdiction is raised either before the High Court at the reference stage or before the learned Arbitrator under Section 16 of the Act of 1996, the deeming provision of waiver, as contemplated under Section 4 of the Act of 1996, would apply and the party concerned would thereafter be barred from raising such objection at a subsequent stage. Question No.2 is answered accordingly.

Question No.3:-

44. As far as Question No.3 is concerned, before adverting to the issue involved, it would be apposite to refer to Section 29A of the Act of 1996, which reads as under:–

> *"**29A. Time limit for arbitral award.**-- (1) The award in matters other than international commercial arbitration shall be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23:*
>
> *Provided that the award in the matter of international commercial arbitration may be made as expeditiously as possible and endeavor may be made to dispose of the matter within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23.]*

(2) If the award is made within a period of six months from the date the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree.

(3) The parties may, by consent, extend the period specified in sub-section (1) for making award for a further period not exceeding six months.

(4) If the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate unless the Court has, either prior to or after the expiry of the period so specified, extended the period:

Provided that while extending the period under this sub-section, if the Court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal, then, it may order reduction of fees of arbitrator(s) by not exceeding five per cent. for each month of such delay.

Provided further that where an application under sub-section (5) is pending, the mandate of the arbitrator shall continue till the disposal of the said application:

Provided also that the arbitrator shall be given an opportunity of being heard before the fees is reduced.]

(5) The extension of period referred to in sub-section (4) may be on the application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by the Court.

(6) While extending the period referred to in sub-section (4), it shall be open to the Court to substitute one or all of the arbitrators and if one or all of the arbitrators are substituted, the arbitral proceedings shall continue from the stage already reached and on the basis of the evidence and material already on record, and the arbitrator(s) appointed under this section shall be deemed to have received the said evidence and material.

(7) In the event of arbitrator(s) being appointed under this section, the arbitral tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal.

(8) It shall be open to the Court to impose actual or exemplary costs upon any of the parties under this section.

> *(9) An application filed under sub-section (5) shall be disposed of by the Court as expeditiously as possible and endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party."*

44.1 A bare perusal of the aforesaid provision reveals that insofar as domestic arbitration is concerned, the arbitral award is required to be made within a period of twelve months from the date of completion of pleadings, which period may further be extended by six months with the consent of the parties. However, the issue which falls for consideration in the present case is as to whether, after passing of the arbitral award, the mandate of the learned Arbitrator can still be extended by the Court under Section 29A of the Act of 1996.

45. The issue in hand stands squarely answered by the Hon'ble Apex Court in the case of ***C. Velusamy v. K. Indhera*** (supra), wherein the Hon'ble Apex Court, while dealing with the provisions of Section 29A of the Act of 1996, held as under:–

> *"**23.** In conclusion, we hold that an application under Section 29A(5) for extension of the mandate of the arbitrator is maintainable even after the expiry of the time under Sections 29A(1) and (3) and even after rendering of an award during that time. Such an award is ineffective and unenforceable. But the power of the court to consider extension is not impaired by such an indiscretion of the arbitrator. While considering the application, the Court will examine if there is sufficient cause for extending the mandate, and in the process, it may impose such terms and conditions as the situation demands. The Court will also take into account other factors such as reduction of the fee of the arbitrator under proviso to Section 29A(4) and also impose costs on parties if the fact situation so demands. Substitution is an option for the Court as the provision itself says, "it shall be open for the Court to substitute", and it will be exercised carefully. If the mandate is extended, the arbitral tribunal will pick up the thread from where it was left, and seamlessly continue the proceeding from the stage at which the mandate had expired, and conclude within the time granted."*

46. In the present case, initially, Shri R.S. Jhala, Judge (Retd.), came to be appointed as the learned Arbitrator vide order dated 03.08.2022. After completion of pleadings, the learned Arbitrator expressed his inability to continue with the proceedings vide communication dated 16.01.2023. Thereafter, an application under Section 11(5) of the Act of 1996 came to be filed, which was allowed and Shri N.N. Mathur, Judge (Retd.), was appointed as the learned Arbitrator on 16.08.2023. Correspondence in this regard was thereafter issued on 31.08.2023. The arbitral award ultimately came to be passed on 31.07.2024, i.e., within one year from the appointment of Shri N.N. Mathur, Judge (Retd.) as the learned Arbitrator. Further, with the consent of the parties, vide order-sheet dated 12.07.2024, it was recorded that the period from 16.01.2023 till 31.08.2023 would stand excluded for the purpose of computing the tenure for completion of the arbitral proceedings.

47. Thus, at this stage, the respondent-non-claimant cannot be permitted to resile from the said position. Even otherwise, in view of the judgment passed by the Hon'ble Apex Court in the case of ***C. Velusamy v. K. Indhera*** (supra), the mandate of the learned Arbitrator can be extended even after passing of the award, as the very object of arbitration cannot be permitted to be frustrated on such hyper-technical grounds. The Hon'ble Apex Court, while deciding the aforesaid case, observed that a Constitutional Court is under an obligation to ensure that mechanisms for resolution of disputes remain accessible, affordable, expeditious and effective. The Hon'ble Apex Court further held that even after passing of the award, the same would remain unenforceable till an order under Section 29A of the Act of 1996

is passed extending the time; however, the award itself cannot be treated as a nullity merely on that ground.

48. In the present case as well, the appellants-claimants have specifically averred that an application under Section 29A of the Act of 1996 had already been filed and was pending consideration before this Court even prior to decision of the objections under Section 34 of the Act of 1996. The respondent-non-claimant did not dispute the said factual position. In that view of the matter, the arbitral award in question could not have been set aside by the learned Commercial Court in the manner done in the present case. At best, the learned Commercial Court could only have observed that the award would remain unenforceable unless and until the application under Section 29A of the Act of 1996 seeking extension of the mandate of the learned Arbitrator was decided. Question No.3 is answered accordingly.

Conclusion:-

49. The learned Commercial Court has failed to consider the aforesaid aspects of the matter and, though reference has been made to the judgments cited at the Bar, the same have not been properly dealt with or appreciated. The order impugned passed by the learned Commercial Court is completely silent on the aforesaid issue and contains no cogent reasoning while setting aside the arbitral award. The order impugned dated 25.02.2026 passed by the learned Judge, Commercial Court, Udaipur in Case No.20/2025 titled as `*City Pulse Enterprise Private Limited v. LR's of Late Shri Ramesh Chandra'* is hereby quashed and set aside and the arbitral award dated 31.07.2024 stands restored. It is, however, clarified that the appellants-claimants shall be entitled to seek execution of the award only after adjudication of the application filed

under Section 29A of the Act of 1996 and, till such adjudication, the award shall remain unenforceable.

50. Accordingly, the instant Civil Miscellaneous Appeal stands disposed of.

51. All other pending applications also stand disposed of.

52. No order as to costs.

(SANDEEP SHAH),J **(ARUN MONGA),J**

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