Case Citation: (2026) ibclaw.in 6184 HC



# IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE DEEPAK KHOT

ON THE 16th OF OCTOBER, 2026

ARBITRATION APPEAL No. 82 of 2024

CNR No.: MPHC010345192024

*SHRIRAM TRANSPORT FINANCE COMPANY LIMITED*

*Versus*

*VIRENDRA SINGH AND OTHERS*

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Appearance:

*Shri Satish Agarwal Shri Divya Krishna Bilaiya and Shri Yashvardhan Agrwal - Advocates for the appellant.*

*Shri Ashok Lalwani - Senior Advocate with Shri Aakash Lalwani - Advocate for the respondent.*

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Heard on : 01.09.2026

Pronounced on : 16.10.2026

ORDER

The present appeal has been filed by the appellant under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act of 1996' for the sake of brevity) being aggrieved by the impugned order dated 20.04.2024 (Annexure P/6) passed by 22nd District & Sessions Judge, Jabalpur in MJC AV No.11/2020 and award dated 05.10.2019 (Annexure P/5) passed by sole Arbitrator in Arbitration Case No.37/2015.

2. The appellant is a private limited company engaged in providing vehicle finance. It is the case of the appellant that the appellant provided finance for purchase of vehicle to the father of the non-applicant No.1 for

which an agreement dated 16.10.1996 (Annexure P/1) was executed between the parties, pursuant to which a loan was extended for a period of 35 months, with the installments being payable from 16.02.1996 to 16.12.1998. It is submitted that since Late Umashankar Singh failed to repay the loan and committed default, therefore, the vehicle was seized in the light of Clause 23 of the agreement.

3. It is submitted that the loanee preferred an application under Section 11(6) of the Act of 1996 before this Court seeking appointment of a sole Arbitrator for adjudication and resolution of the disputes between the parties. The said application was allowed by this Court vide order dated 03.03.2016 (Annexure P/3). Thereafter, during the pendency of the arbitral proceedings, owing to the unfortunate demise of the Sole Arbitrator, this Court vide order dated 10.05.2018 (Annexure P/4), appointed another Arbitrator to continue and conclude the arbitral proceedings.

4. The Arbitrator after recording the evidence led by the parties and considering the documents brought on record, adjudicated the disputes between the parties and passed the award dated 05.10.2019 (Annexure P/5). Thereafter, the appellant submitted application under Section 34 of the Act of 1996 before the Court below which has been dismissed vide impugned order dated 20.04.2024.

5. The sole argument advanced by the appellant is that the award passed by the learned Arbitrator is contrary to the public policy of India, as the Arbitrator, by erroneously applying the provisions of the Evidence Act, has wrongly shifted the burden and onus of proving repayment of the loan

amount/installments upon the appellant, even though it was the appellant who had sanctioned and disbursed the loan amount to the respondent/claimant.

6. It is submitted that the documents submitted by the claimants itself shows that payment was not made, therefore, the appellant has repossessed the vehicle in terms of the loan agreement (Annexure P-2). It is further submitted that the appellant himself has waived off the interest over the amount prayed for by filing an amendment application which was allowed. It is further submitted that the application submitted by the respondent/claimant for production of the original document of the accounts was also disposed of in the light of the fact that the record being old was not available with the appellant. It is submitted that the documents submitted by the respondent/claimant itself shows that the amount against the applicant/appellant was due. It is submitted that the Arbitrator has passed the award granting Rs.8,50,000/- along with interest is against the public policy of India.

7. To bolster his contention, learned counsel has relied upon judgment of Hon'ble Apex Court in the case of ***Anil Rishi vs. Gurbaksh Singh (2006) 5 SCC 558, Rangammal Kuppuswami (2011) 12 SCC 220, Union of India vs. Vasavi Cooperative Housing Society Ltd. (2014) 2 SCC 269, A Raghavamma vs. A.Chenchamma AIR 1964 SC 136 and Parimal vs. Veena (2011) 3 SCC 545***.

8. Per contra, learned counsel for the respondent/claimant has taken objection in regard to burden of proof. It is submitted that the burden of

proof was on the appellant/company to prove their case before the Arbitrator as they possessed the best evidence i.e. the statement of account and details of the payments made by the respondent herein (claimant) which they failed to produce before the Arbitrator, therefore, the Arbitrator on the basis of available documents has rightly found the respondent/claimant entitled for the amount awarded.

9. Learned counsel for the respondent has submitted that in light of the judgment passed by the Hon'ble Apex court in the case of ***Union of India vs. Ex. Major Sudershan Gupta (2009) 6 SCC 298***, the record was required to be preserved by the appellant as the matter was pending consideration for arbitration in terms of the agreement between the parties. It is further submitted that as per the arbitration clause, any dispute arising between the parties in connection or in relation to the agreement was required to be referred to the arbitrator, therefore, taking unilateral possession of the vehicle is against the terms of the agreement.

10. It is submitted that although all the installments were duly paid by the loanee but that has not been reflected in the account statement, therefore, the arbitrator has taken a view that the amount of Rs.73,000/-and Rs.17,000/- has been deposited vide receipt No.5528 (Ex.P/3) and receipt No.5529 (Ex.P/4) but since the same has not been mentioned in the account statement, therefore, the account statement is fabricated and cannot be believed.

11. To bolster his submissions, learned counsel has relied upon the judgments in the case of ***Gopal Krishnaji Ketkar vs. Mohd. Haji Latif & ors. AIR 1968 SC 1413; Union of India & anr. vs.Ex. Major Sudershan Gupta***

*(2009) 6 SCC 298; Associate Builders vs. Delhi Development Authority (2015) 3 SCC 49; Central Coalfields Ltd. vs. M/s Ashok Transport Agency 1987 SCC OnLine Ori 3; The Citizens Cooperative Bank Ltd. vs. Krishan Lal Choudhary 2018 SCC OnLine J&K 747; ICICI Bank Ltd. vs. Prakash Kaur & Ors. (2007) 2 SCC 711; Hyder Consulting (UK) Ltd. vs. State of Orissa through Chief Engineer (2016) 6 SCC 362; UHL Power Company Ltd. vs. State of Himachal (2022) 4 SCC 116; Larsen Air Conditioning & Refrigeration Company vs. Union of India & ors. (2023) 15 SCC 472; Gayatri Balasamy vs. ISG Novasoft Technologies Ltd. (2025) 7 SCC 1; MMTC Ltd. vs. Vedanta Ltd. (2019) 4 SCC 163; Ssang Yong Engineering & Construction Company Ltd. vs. NHAI (2019) 15 SCC 131; Punjab State Civil Supplies Corporation Ltd. vs. Sanman Rice Mills & Ors. 2024 SCC OnLine SC 2632; Somdatt Builders NCC NEC (JV) vs. NHAI (2025) 6 SCC 757; Jan De Nul Dredging India Pvt. Ltd. vs. Tuticorn Port Trust (2026) 3 SCC 186 and Oil and Natural Gas Corporation Ltd. vs. G&T Beckfield Drilling Services Pvt. Ltd. 2025 SCC OnLine SC 1888*.

12. Heard learned counsel for the parties and perused the record.

13. It is not disputed that Late Umashankar Singh (loanee) i.e. father of non-applicant No.1, had availed financial assistance from the appellant-company for purchase of a vehicle for which an agreement dated 16.10.1996 (Annexure P/1) was executed between the parties. It is also not disputed that a dispute with regard to repayment of loan amount had arisen between the parties and to resolve the same, this Court appointed a sole arbitrator on an application filed by the loanee under Section 11(6) of the Act of 1996. The

Arbitrator, after affording due opportunity to both the parties and upon consideration of the pleadings, evidence and documents available on record, passed the award dated 05.10.2019 (Annexure P/5).

14. The principal contention of the appellant before this Court is that the Arbitrator has committed an error in placing the burden of proof upon the appellant in respect of repayment of the loan installments and, consequently, the award is contrary to the public policy of India. However, this contention cannot be accepted as the appellant was in possession of the statement of account and other records relating to the loan transaction. The explanation that the records were old and not available cannot save the appellant from the consequences of non-production of the best evidence, particularly when the appellant sought to substantiate its claim of default and repossession of vehicle on the basis of the said transactions.

15. The Arbitrator, upon consideration of the receipts showing payment of Rs.73,000/- and Rs.17,000/- (margin money of Rs.90,000/-) and their non-reflection in the account statement, recorded a finding that the said statement was fabricated. The said conclusion is a finding of fact based on appreciation of evidence and such re-appreciation of evidence is beyond the limited scope of appellate jurisdiction under Section 37 of the Act, 1996.

16. The Hon'ble Apex Court in the case of ***Anil Rishi v. Gurbaksh Singh, (2006) 5 SCC 558*** has held as under :

> *9. In terms of the said provision, the burden of proving the fact rests on the party who substantially asserts the affirmative issues and not the party who denies it. The said rule may not be universal in its application and there may be an exception thereto. The learned trial court and the High Court proceeded on the basis that the defendant was in a dominating position and there had been a fiduciary relationship between the parties. The appellant in his*

*written statement denied and disputed the said averments made in the plaint.*

*10. Pleading is not evidence, far less proof. Issues are raised on the basis of the pleadings. The defendant-appellant having not admitted or acknowledged the fiduciary relationship between the parties, indisputably, the relationship between the parties itself would be an issue. The suit will fail if both the parties do not adduce any evidence, in view of Section 102 of the Evidence Act. Thus, ordinarily, the burden of proof would be on the party who asserts the affirmative of the issue and it rests, after evidence is gone into, upon the party against whom, at the time the question arises, judgment would be given, if no further evidence were to be adduced by either side.*

*20. In R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple [(2003) 8 SCC 752 : JT (2004) 6 SC 442] the law is stated in the following terms: (SCC p. 768, para 29)*

> *"29. In a suit for recovery of possession based on title it is for the plaintiff to prove his title and satisfy the court that he, in law, is entitled to dispossess the defendant from his possession over the suit property and for the possession to be restored to him. However, as held in Addagada Raghavamma v. Addagada Chenchamma [(1964) 2 SCR 933 : AIR 1964 SC 136] there is an essential distinction between burden of proof and onus of proof: burden of proof lies upon a person who has to prove the fact and which never shifts. Onus of proof shifts. Such a shifting of onus is a continuous process in the evaluation of evidence. In our opinion, in a suit for possession based on title once the plaintiff has been able to create a high degree of probability so as to shift the onus on the defendant it is for the defendant to discharge his onus and in the absence thereof the burden of proof lying on the plaintiff shall be held to have been discharged so as to amount to proof of the plaintiff's title."*

17. The Hon'ble Apex Court in the case of ***Rangammal v. Kuppuswami, (2011) 12 SCC 220*** has held as under :

> *21. Section 101 of the Evidence Act, 1872 defines "burden of proof" which clearly lays down that:*
>
> *"**101.Burden of proof.**—Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.*
>
> *When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."*
>
> *Thus, the Evidence Act has clearly laid down that the burden of proving a fact always lies upon the person who asserts it. Until such burden is discharged, the other party is not required to be called upon to prove his case. The court has to examine as to whether the person upon whom the burden lies*

*has been able to discharge his burden. Until he arrives at such conclusion, he cannot proceed on the basis of weakness of the other party.*

*22. In view of this legal position of the Evidence Act, it is clear that in the instant matter, when Respondent 1-plaintiff pleaded that the disputed property fell into the share of the plaintiff by virtue of the sale deed dated 24-2-1951, then it was clearly for Respondent 1-plaintiff to prove that it was executed for legal necessity of the appellant while she was a minor. But, the High Court clearly took an erroneous view while holding that it is the appellant-defendant who should have challenged the sale deed after attaining majority as she had no reason to do so since Respondent 1-plaintiff failed to first of all discharge the burden that the sale deed in fact had been executed for legal necessity of the minor's predecessor mother was without the permission of the court. It was not the appellant-defendant who first of all claimed benefit of the sale deed or asserted its genuineness, hence the burden of challenging the sale deed specifically when she had not even been dispossessed from the disputed share, did not arise at all.*

*31. Application of Section 101 of the Evidence Act, 1872 thus came up for discussion in Subhra Mukherjee case [(2000) 3 SCC 312 : AIR 2000 SC 1203] and while discussing the law on the burden of proof in the context of dealing with the allegation of sham and bogus transaction, it was held that the party which makes the allegation must prove it. But the Court was further pleased to hold, wherein the question before the Court was "whether the transaction in question was a bona fide and genuine one" so that the party/plaintiff relying on the transaction had to first of all prove its genuineness and only thereafter would the defendant be required to discharge the burden in order to dislodge such proof and establish that the transaction was sham and fictitious. This ratio can aptly be relied upon in this matter as in this particular case, it is Respondent 1-plaintiff Kuppuswami who relied upon the alleged sale deed dated 24-2-1951 and included the subject-matter of the property which formed part of the sale deed and claimed partition. This sale deed was denied by the appellant-defendant on the ground that it was bogus and a sham transaction which was executed admittedly in 1951 when she was a minor.*

*32. Thus, it was Respondent 1-plaintiff who should have first of all discharged the burden that the sale deed executed during the minority of the appellant was genuine and was fit to be relied upon. If the courts below including the High Court had felt satisfied on this aspect, only then the burden could be shifted on the appellant-defendant to dislodge the case of the plaintiff that the sale deed was not genuine. But when the plaintiff merely pleaded in the plaint but failed to lead any evidence—much less proof, that the sale deed was*

*genuine and was executed in order to discharge the burden of legal necessity in the interest of minor, then the High Court clearly misdirected itself by recording in the impugned order that it is the defendant-appellant herein who should have challenged the genuineness of the sale deed after attaining majority within the period of limitation.*

*33. Since the High Court has misplaced the burden of proof, it clearly vitiated its own judgments as also of the courts below since it is well-established dictum of the Evidence Act that misplacing burden of proof would vitiate the judgment. It is also equally and undoubtedly true that the burden of proof may not be of much consequence after both the parties lay evidence, but while appreciating the question of burden of proof, misplacing of burden of proof on a particular party and recording findings in a particular way definitely vitiates the judgment as it has happened in the instant matter. This position stands reinforced by several authorities including the one delivered in Koppula Koteshwara Rao v. Koppula Hemantha Rao [2002 AIHC 4950 (AP)] .*

18. The Hon'ble Apex Court in the case of **Union of India v. Vasavi Coop. Housing Society Ltd., (2014) 2 SCC 269** has held as under :

*15. It is trite law that, in a suit for declaration of title, the burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the defendants would not be a ground to grant relief to the plaintiff.*

*16. The High Court, we notice, has taken the view that once the evidence is let in by both the parties, the question of burden of proof pales into insignificance and the evidence let in by both the parties is required to be appreciated by the court in order to record its findings in respect of each of the issues that may ultimately determine the fate of the suit. The High Court has also proceeded on the basis that initial burden would always be upon the plaintiff to establish its case but if the evidence let in by the defendants in support of their case probabilises the case set up by the plaintiff, such evidence cannot be ignored and kept out of consideration.*

19. The Hon'ble Apex Court in the case of ***Parimal v. Veena, (2011) 3 SCC 545*** has held as under :

*15. While deciding whether there is sufficient cause or not, the court must bear in mind the object of doing substantial justice to all the parties concerned and that the technicalities of the law should not prevent the court from doing substantial justice and doing away the illegality perpetuated on the basis of the judgment impugned before it. (Vide State of Bihar v. Kameshwar Prasad Singh [(2000) 9 SCC 94 : 2000 SCC (L&S) 845 : AIR 2000 SC 2306] , Madanlal v. Shyamlal [(2002) 1 SCC 535 : AIR 2002 SC*

*100] , Davinder Pal Sehgal v. Partap Steel Rolling Mills (P) Ltd. [(2002) 3 SCC 156 : AIR 2002 SC 451] , Ram Nath Sao v. Gobardhan Sao [(2002) 3 SCC 195 : AIR 2002 SC 1201] , Kaushalya Devi v. Prem Chand [(2005) 10 SCC 127] , Srei International Finance Ltd. v. Fairgrowth Financial Services Ltd. [(2005) 13 SCC 95] and Reena Sadh v. Anjana Enterprises [(2008) 12 SCC 589 : AIR 2008 SC 2054] .)*

*19. The provisions of Section 101 of the Evidence Act provide that the burden of proof of the facts rests on the party who substantially asserts it and not on the party who denies it. In fact, burden of proof means that a party has to prove an allegation before he is entitled to a judgment in his favour. Section 103 provides that the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any special law that the proof of that fact shall lie on any particular person. The provision of Section 103 amplifies the general rule of Section 101 that the burden of proof lies on the person who asserts the affirmative of the facts in issue.*

20. The Hon'ble Apex Court in the case of ***A. Raghavamma v. A. Chenchamma, AIR 1964 SC 136*** has held as under :

*12. Learned Advocate-General contends that the learned Subordinate Judge as well as the High Court did not draw the appropriate presumptions arising from the fact that the transactions were old ones; nor did they give sufficient weight to the entries in the revenue records, the admissions made by the parties and to the conduct of the parties and such other important circumstances and, therefore, their findings are liable to be questioned in this appeal. This argument in effect and substance means that the courts below have not given due weight to particular pieces of evidence. There is an essential distinction between burden of proof and onus of proof : burden of proof lies upon the person who has to prove a fact and it never shifts, but the onus of proof shifts. The burden of proof in the present case undoubtedly lies upon the plaintiff to establish the factum of adoption and that of partition. The said circumstances do not alter the incidence of the burden of proof. Such considerations, having regard to the circumstances of a particular case, may shift the onus of proof. Such a shifting of onus is a continuous process in the evaluation of evidence. The criticism levelled against the judgment, of the lower Courts, therefore, only pertain to the domain of appreciation of evidence. We shall, therefore, broadly consider the evidence not for the purpose of revaluation, but to see whether the treatment of the case by the courts below is such that it falls in the category of exceptional cases where this Court, in the interest of justice, should depart from its usual practice.*

21. The Hon'ble Apex Court in the case of ***Gopal Krishnaji Ketkar vs. Mohd. Haji Latif & ors. AIR 1968 SC 1413*** has held as under :

*5. On behalf of the appellant reference was made to the Area Book, Ex. 66 of the year 1890. The entry shows the name of Laxmibai widow of Govind Gopal Ketkar under the heading "bl eps ukao" (name of the person). Exhibit 67 is the entry from the Phalani Book for the year 1897 and shows the land as "Kilyacha Dongar" and under the column "bl eps ukao" is shown the name of Laxmibai widow of Govind Gopal. Exhibit 68 is of the same year from the revision Phalani containing similar entry with the map attached. In Exhibit 70 the name of Laxmibai is shown as "Khatedar" for the year 1906. In the remarks column there is an entry "one built well, one pakka built masjid, one Dargah, one tomb". Exhibit 71 is an entry for the year 1915 from Akar Phod Patrak and in the column of "Kabjedar" the name of Rukminibai Hari appears with regard to Plot 134. Thereafter, in the record of rights for the year 1913, Exhibit. 76, the name of the predecessor of the appellant is shown. On the basis of these entries it was submitted by Mr Gokhale that the ownership of the Plot was with the appellant and not with the Dargah. But there are important circumstances in this case which indicate that the appellant is not the owner of Survey Plot No. 134. Exhibits 64 and 65 are significant in this connection. Exhibit 64 is an entry from the "Sud" in Marathi for the year 1858 in connection with Survey Plot No. 134 (Revisional Survey Number). The original survey number of this Plot was 24 and it was known as "Kilyacha Dongar". The total area is shown to be 249 acres and 24 gunthas. It is shown as "Khalsa" land. Kharaba is shown as 89 acres 24 gunthas and the balance of the area is shown as 160 acres. In the last column the name of the cultivator is not mentioned but it is shown as "Khapachi". It is significant that the name of the Ketkar family is absent from this record. No convincing reason was furnished on behalf of the appellant to show why his name was not entered in the "Sud". It is also important to notice that the appellant has furnished no documentary evidence to show how his family acquired title to the land from the earliest time; there is no sanad or grant produced by the appellant to show that he had acquired title to the land. It further appears that the appellant's family did not assert any title to the land at the time of the survey made in 1858; otherwise there is no reason why its name was not entered in the "Sud" of the year 1858. It is true that there are a number of entries subsequent to the year 1890 and 1897 in which the Ketkar family is shown as the "Khatedar" or the occupant but these entries are not of much significance since the Ketkar family was in the fiduciary position of a manager of the Dargah and was lawfully in possession of Survey Plot No. 134 in that capacity. There is also another important circumstance that the appellant has no lands of his own near Plot No. 134 and the nearest lands he owns are in Bandhanwadi which are admittedly 3 ½ to 4 miles away from the top of the hill. There is also the important admission made by the appellant in the course of his evidence that there are 2 or 3 tombs behind the Musaferkhana. He stated further that "there is no cemetery or burial ground in Survey No. 134".*

*But this evidence is in direct conflict with the statement of the appellant in the previous case that "Round about the Dargah many people die every year…. Anyone that died there, whether Hindu, Muslim or Parsee if he has no heirs is buried there". He also conceded that there is one public tank known as "Chasmyachi Vihir" near the Dargah and there are 5 wells near the Dargah and five boundaries "Aranas" about one mile from the Dargah. Lastly, reference should be made to the important circumstance that the appellant has not produced the account of the Dargah income. In the course of his evidence the appellant admitted that he was enjoying the income of Plot No. 134 but he did not produce any accounts to substantiate his contention. He also admitted that "he had got record of the Dargah income and that account was kept separately". But the appellant has not produced either his own accounts or the account of the Dargah to show as to how the income from Plot No. 134 was dealt with. Mr Gokhale, however, argued that it was no part of the appellant's duty to produce the accounts unless he was called upon to do so and the onus was upon the respondents to prove the case and to show that the Dargah was the owner of Plot No. 134. We are unable to accept this argument as correct. Even if the burden of proof does not lie on a party the Court may draw an adverse inference if he withholds important documents in his possession which can throw light on the facts at issue. It is not, in our opinion, a sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the best evidence which is in their possession which could throw light upon the issues in controversy and to rely upon the abstract doctrine of onus of proof. In Murugesam Pillai v. Manickavasaka Pandara1 Lord Shaw observed as follows:*

> *"A practice has grown up in Indian procedure of those in possession of important documents or information lying by, trusting to the abstract doctrine of the onus of proof, and failing, accordingly, to furnish to the Courts the best material for its decision. With regard to third parties, this may be right enough — they have no responsibility for the conduct of the suit; but with regard to the parties to the suit it is, in Their Lordships' opinion, an inversion of sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the written evidence in their possession which would throw light upon the proposition."*

*This passage was cited with approval by this Court in a recent decision— Biltu Ram v. Jainandan Prasad. In that case, reliance was placed on behalf of the defendants upon the following passage from the decision of the Judicial Committee in Bilas Kunwar v. Desraj Ranjit Singh.*

> *"But it is open to a litigant to refrain from producing any documents that he considers irrelevant; if the other litigant is dissatisfied it is for him to apply for an affidavit of documents and he can obtain inspection and production of all that appears to him in such affidavit to be relevant and proper. If he fails so to do, neither he nor the Court at his*

*suggestion is entitled to draw any inference as to the contents of any such documents."*

*But Shah, J., speaking for the Court, stated:*

*"The observations of the Judicial Committee do not support the proposition that unless a party is called upon expressly to make an affidavit of documents and inspection and production of documents is demanded, the Court cannot raise an adverse inference against a party withholding evidence in his possession. Such a rule is inconsistent with Illustration (g) of Section 114 of the Evidence Act, and also an impressive body of authority."*

22. The Hon'ble Apex Court in the case of ***Union of India v. Sudershan Gupta, (2009) 6 SCC 298*** has held as under :

*4. However, the records disclose that the writ petition was filed in the Delhi High Court by the respondent before the expiry of 7 years' period and since the matter was sub judice before the Court, the army authorities were required to preserve the records so as to make the same available to the Court to effectively decide the issue with regard to the legality or validity of the order of convening the General Court Martial. It would not be possible to decide the issue raised, as has been rightly held by the High Court, namely, as to whether or not there was proper application of mind by the competent authority while passing the convening order.*

23. The Hon'ble Apex Court in the case of ***Associate Builders v. Delhi Development Authority, (2015) 3 SCC 49*** has held as under :

*33. It must clearly be understood that when a court is applying the "public policy" test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score Very often an arbitrator is a lay person not necessarily trained in law. Lord Mansfield, a famous English Judge, once advised a high military officer in Jamaica who needed to act as a Judge as follows: "General, you have a sound head, and a good heart; take courage and you will do very well, in your occupation, in a court of equity. My advice is, to make your decrees as your head and your heart dictate, to hear both sides patiently, to decide with firmness in the best manner you can; but be careful not to assign your reasons, since your determination may be substantially right, although your reasons may be very bad, or essentially wrong". It is very important to bear this in mind when awards of lay arbitrators are challenged.] . Once it is found that the arbitrators approach is not arbitrary or capricious, then he is the last word on facts. In*

*P.R. Shah, Shares & Stock Brokers (P) Ltd. v. B.H.H. Securities (P) Ltd. [(2012) 1 SCC 594 : (2012) 1 SCC (Civ) 342] , this Court held : (SCC pp. 601-02, para 21)*

> *"21. A court does not sit in appeal over the award of an Arbitral Tribunal by reassessing or reappreciating the evidence. An award can be challenged only under the grounds mentioned in Section 34(2) of the Act. The Arbitral Tribunal has examined the facts and held that both the second respondent and the appellant are liable. The case as put forward by the first respondent has been accepted. Even the minority view was that the second respondent was liable as claimed by the first respondent, but the appellant was not liable only on the ground that the arbitrators appointed by the Stock Exchange under Bye-law 248, in a claim against a non-member, had no jurisdiction to decide a claim against another member. The finding of the majority is that the appellant did the transaction in the name of the second respondent and is therefore, liable along with the second respondent. Therefore, in the absence of any ground under Section 34(2) of the Act, it is not possible to re-examine the facts to find out whether a different decision can be arrived at."*

*34. It is with this very important caveat that the two fundamental principles which form part of the fundamental policy of Indian law (that the arbitrator must have a judicial approach and that he must not act perversely) are to be understood.*

24. The Hon'ble Apex Court in the case of ***Central Coalfields Limited v. Ashok Transport Agency, 1987 SCC OnLine Ori 3*** has held as under :

> *5. The Arbitrator is a judge of the choice of the parties not being bound by the technicalities and he is to follow the principle of natural justice and those procedures which are provided under the statute. Once the Arbitrator expressed that the disputes would be on the points indicated in the order, there is no doubt that having the rich experience of a judge in the past he would apply his mind to the questions. Accordingly, the technicalities of O. 14, R. 1, C.P.C. for settling the issues are not required to be adhered to.*

25. The Hon'ble Apex Court in the case of ***The Citizens Cooperative Bank Ltd. vs. Krishan Lal Choudhary & ors. 2018 SCC OnLine J&K 747*** has held as under :

> *11. It was next contended that the direction for framing issues while conducting Arbitration proceedings was also not necessary. What is stated by the learned counsel for the appellant may be*

*correct. While the Arbitrator may be at liberty to adopt its own procedure for conducting the Arbitration proceedings in accordance with the broader parameter laid down in the 1989 Act and the rules frame thereunder, yet in the absence of any prohibition expressly prescribed in the Act and the rules, it would be open to the Arbitrator to even frame issues for purposes of crystallizing the dispute pending before the Arbitrator. We, therefore, modify the judgment and order impugned to the extent that while it may not be necessary for the Arbitrator to necessarily frame issues for adjudication of the dispute, yet the Arbitrator may be at liberty to frame issues, if he deems it necessary.*

26. The Hon'ble Apex Court in the case of ***ICICI Bank Ltd. vs. Prakash Kaur & ors. (2007) 2 SCC 711*** has held as under :

*16. Before we part with this matter, we wish to make it clear that we do not appreciate the procedure adopted by the Bank in removing the vehicle from the possession of the writ petitioner. The practice of hiring recovery agents, who are musclemen, is deprecated and needs to be discouraged. The Bank should resort to procedure recognised by law to take possession of vehicles in cases where the borrower may have committed default in payment of the instalments instead of taking resort to strong-arm tactics.*

27. The Hon'ble Apex Court in the case of ***Hyder Consulting (UK) Ltd. v. State of Orissa, (2016) 6 SCC 362*** has held as under :

*20. In view of the aforesaid, we set aside the judgment and order [State of Punjab v. Lamba Builders, 2010 SCC OnLine P&H 4557] passed by the High Court relating to grant of interest and direct the executing court, as the same is pending, to compute the interest as per the decision rendered in Hyder Consulting (UK) Ltd. [Hyder Consulting (UK) Ltd. v. State of Orissa, (2015) 2 SCC 189 : (2015) 2 SCC (Civ) 38].*

28. The Hon'ble Apex Court in the case of ***UHL Power Co. Ltd. v. State of H.P., (2022) 4 SCC 116*** has held as under :

*5. By now, the aforesaid aspect has been set at rest by a three-Judge Bench of this Court in Hyder Consulting (UK) Ltd. v. State of Orissa [Hyder Consulting (UK) Ltd. v. State of Orissa, (2015) 2 SCC 189 : (2015) 2 SCC (Civ) 38] , that has overruled the verdict in S.L. Arora [State of Haryana v. S.L. Arora & Co., (2010) 3 SCC 690 : (2010) 1 SCC (Civ) 823] . The majority view is that post-award interest can be granted by an arbitrator on the interest amount awarded. Writing for the majority, Bobde, J. (as his Lordship then was) has held thus : (Hyder Consulting case [Hyder Consulting (UK) Ltd. v. State of Orissa, (2015) 2 SCC 189 : (2015) 2 SCC (Civ) 38] , SCC p. 204, para 21)*

*"21. In the result, I am of the view that S.L. Arora case [State*

*of Haryana v. S.L. Arora & Co., (2010) 3 SCC 690 : (2010) 1 SCC (Civ) 823] is wrongly decided in that it holds that a sum directed to be paid by an Arbitral Tribunal and the reference to the award on the substantive claim does not refer to interest pendente lite awarded on the "sum directed to be paid upon award" and that in the absence of any provision of interest upon interest in the contract, the Arbitral Tribunal does not have the power to award interest upon interest, or compound interest either for the pre-award period or for the post-award period. Parliament has the undoubted power to legislate on the subject and provide that the Arbitral Tribunal may award interest on the sum directed to be paid by the award, meaning a sum inclusive of principal sum adjudged and the interest, and this has been done by Parliament in plain language."*

*(emphasis supplied)*

*6. While giving a concurring opinion in the aforesaid case, Sapre, J. made the following pertinent observations : (Hyder Consulting case [Hyder Consulting (UK) Ltd. v. State of Orissa, (2015) 2 SCC 189 : (2015) 2 SCC (Civ) 38] , SCC p. 206, para 31)*

*"31. Coming now to the post-award interest. Section 31(7)(b) of the Act employs the words, 'A sum directed to be paid by an arbitral award …'. Clause (b) uses the words "arbitral award" and not the "Arbitral Tribunal". The arbitral award as held above, is made in respect of a "sum" which includes the interest. It is, therefore, obvious that what carries under Section 31(7)(b) of the Act is the "sum directed to be paid by an arbitral award" and not any other amount much less by or under the name "interest". In such situation it cannot be said that what is being granted under Section 31(7)(b) of the Act is "interest on interest". Interest under clause (b) is granted on the "sum" directed to be paid by an arbitral award wherein the "sum" is nothing more than what is arrived at under clause (a)."*

*(emphasis is original and supplied)*

*7. As the judgment in S.L. Arora [State of Haryana v. S.L. Arora & Co., (2010) 3 SCC 690 : (2010) 1 SCC (Civ) 823] , on which reliance has been placed by the Division Bench of the High Court of Himachal Pradesh, has since been overruled by a three-Judge Bench of this Court in Hyder Consulting (UK) [Hyder Consulting (UK) Ltd. v. State of Orissa, (2015) 2 SCC 189 : (2015) 2 SCC (Civ) 38] , the findings returned by the appellate court in the impugned judgment to the effect that the Arbitral Tribunal is not empowered to grant compound interest or interest upon interest and only simple interest can be awarded in favour of UHL on the principal amount claimed, is quashed and set aside. As a result, the findings returned in para 54(a) of the impugned judgment [UHL Power Co. Ltd. v. State of H.P.,*

*2011 SCC OnLine HP 1828] insofar as it relates to grant of the interest component, are reversed while restoring the arbitral award on the above aspect in favour of UHL.*

29. The Hon'ble Apex Court in the case of **Larsen Air Conditioning & Refrigeration Co. v. Union of India, (2023) 15 SCC 472** has held as under :

***Analysis and conclusion***

*11. Section 31(7)(b) of the 1996 Act, was amended by Act 3 of 2016, w.e.f. 23-10-2015. The pre-amended provision, empowers the arbitrator to award both pre-award and post-award interest, and specifies that the awarded sum would carry an interest of 18% p.a., unless provided otherwise, from the date of award till the date of payment. The pre-amended section, as it stood on the date of award by the arbitrator (21-1-1999), read as follows:*

***"31.Form and contents of arbitral award.—*** ***

** **

*(7)(a) Unless otherwise agreed by the parties, where and insofar as an arbitral award is for the payment of money, the Arbitral Tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.*

*(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of eighteen per centum per annum from the date of the award to the date of payment."*

*(emphasis supplied)*

30. The Hon'ble Apex Court in the case of ***Gayatri Balasamy v. ISG Novasoft Technologies Ltd., (2025) 7 SCC 1*** has held as under :

*79. However, the Court, while exercising this power, must be cautious and mindful not to overstep its role by altering the interest rate unless there are compelling and well-founded reasons to do so. In exercising this power, the Court is not acting in an appellate capacity, but rather under limited authority. For instance, the 1996 Act stipulates a standard post-award interest rate. When the statute itself benchmarks a standard, unless there are special and specific reasons, the rate of interest stipulated by the statute should be applied.*

*80. Nevertheless, this limited power is significant, as it can help avoid further rounds of litigation. Without it, the Court may be forced to set aside the entire award or order a fresh round of arbitration because of an erroneous interest rate rather than simply adjusting this rate.*

31. The Hon'ble Apex Court in the case of ***MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163*** has held as under :

> *14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the court under Section 34 and by the court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings.*

32. The Hon'ble Apex Court in the case of ***Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131*** has held as under :

> *76. However, when it comes to the public policy of India, argument based upon "most basic notions of justice", it is clear that this ground can be attracted only in very exceptional circumstances when the conscience of the Court is shocked by infraction of fundamental notions or principles of justice. It can be seen that the formula that was applied by the agreement continued to be applied till February 2013 — in short, it is not correct to say that the formula under the agreement could not be applied in view of the Ministry's change in the base indices from 1993-1994 to 2004-2005. Further, in order to apply a linking factor, a Circular, unilaterally issued by one party, cannot possibly bind the other party to the agreement without that other party's consent. Indeed, the Circular itself expressly stipulates that it cannot apply unless the contractors furnish an undertaking/affidavit that the price adjustment under the Circular is acceptable to them. We have seen how the appellant gave such undertaking only conditionally and without prejudice to its argument that the Circular does not and cannot apply. This being the case, it is clear that the majority award has created a new contract for the parties by applying the said unilateral Circular and by substituting a workable formula under the agreement by another formula dehors the agreement. This being the case, a fundamental principle of justice has been breached, namely, that a unilateral addition or alteration of a contract can never be foisted upon an unwilling party, nor can a party to the agreement be liable to perform a bargain not entered into with the other party. Clearly, such a course of conduct would be contrary to fundamental principles of justice as followed in this country, and shocks the conscience of this Court. However, we repeat that this ground is available only in very exceptional circumstances, such as the fact situation in the present case. Under no circumstance can any court interfere with an arbitral award on the ground that justice has not been done in the opinion of the*

*Court. That would be an entry into the merits of the dispute which, as we have seen, is contrary to the ethos of Section 34 of the 1996 Act, as has been noted earlier in this judgment.*

33. The Hon'ble Apex Court in the case of ***Punjab State Civil Supplies Corporation Ltd. vs. Sanman Rice Mills & ors. 2024 SCC OnLine SC 2632*** has held as under :

*12. It is pertinent to note that an arbitral award is not liable to be interfered with only on the ground that the award is illegal or is erroneous in law that too upon reappraisal of the evidence adduced before the arbitral trial. Even an award which may not be reasonable or is non-speaking to some extent cannot ordinarily be interfered with by the courts. It is also well settled that even if two views are possible there is no scope for the court to reappraise the evidence and to take the different view other than that has been taken by the arbitrator. The view taken by the arbitrator is normally acceptable and ought to be allowed to prevail.*

*13. In paragraph 11 of Bharat Coking Coal Ltd. v. L.K. Ahuja, it has been observed as under:*

> *"11. There are limitations upon the scope of interference in awards passed by an arbitrator. When the arbitrator has applied his mind to the pleadings, the evidence adduced before him and the terms of the contract, there is no scope for the court to reappraise the matter as if this were an appeal and even if two views are possible, the view taken by the arbitrator would prevail. So long as an award made by an arbitrator can be said to be one by a reasonable person no interference is called for. However, in cases where an arbitrator exceeds the terms of the agreement or passes an award in the absence of any evidence, which is apparent on the face of the award, the same could be set aside."*

*14. It is equally well settled that the appellate power under Section 37 of the Act is not akin to the normal appellate jurisdiction vested in the civil courts for the reason that the scope of interference of the courts with arbitral proceedings or award is very limited, confined to the ambit of Section 34 of the Act only and even that power cannot be exercised in a casual and a cavalier manner.*

34. The Hon'ble Apex Court in the case of ***Somdatt Builders-NCC-NEC (JV) v. NHAI, (2025) 6 SCC 757*** has held as under :

*43. As already discussed above, this is clearly a plausible view. In fact, according to us, it is the correct interpretation of Clause 51 made by the DRB and the Arbitral Tribunal. As such, the learned Single Judge rightly declined to interfere with the award under Section 34 of the 1996 Act. If that be the position, there was no justification at all for the Division Bench of the High Court to set aside the award under Section 37 of the 1996 Act.*

*51. As already discussed above, the Arbitral Tribunal had interpreted Clause 51 in a reasonable manner based on the evidence on record. This interpretation was affirmed by the learned Single Judge exercising jurisdiction under Section 34 of the 1996 Act. Therefore, the Division Bench [NHAI v. Som Datt Builders-NCC-NEC (JV), 2009 SCC OnLine Del 3692] of the High Court was not at all justified in setting aside the arbitral award exercising extremely limited jurisdiction under Section 37 of the 1996 Act by merely using expressions like "opposed to the public policy of India", "patent illegality" and "shocking the conscience of the court".*

35. The Hon'ble Apex Court in the case of ***Jan De Nul Dredging India (P) Ltd. v. Tuticorin Port Trust, (2026) 3 SCC 186*** has held as under :

*50. Before parting, we consider it proper to note that the Act is a special enactment which aims to resolve contractual/commercial disputes through arbitration with the minimum intervention of the court, if not without the intervention of the court. In the event, the courts are allowed to step in at every stage and the arbitral awards are subjected to challenge before the courts in hierarchy before court of first instance, through regular appeals and finally by means of SLP/civil appeal before the Supreme Court, it would obviate/frustrate and defeat the very purpose of the Act. It is, therefore, necessary to accept the arbitral award if it is not patently illegal or does not fall within the scope of intervention under Section 34 of the Act. The appeal thereof has a much narrower scope of intervention particularly when the arbitral award has been upheld under Section 34 of the Act. The appellate jurisdiction acquires little significance only when the arbitral award has been erroneously upheld or set aside by the court in exercise of its power under Section 34 of the Act as discussed earlier, but has no authority of law to consider the matter which was before the Arbitral Tribunal on merits.*

36. The Hon'ble Court in the case of ***Oil and Natural Gas Corporation Ltd. vs. G & T Beckfield Drilling Services Pvt. Ltd. 2025 SCC OnLine SC 1888*** has held as under :

***Law regarding payment of interest by arbitral tribunal***

*12. Sub-section (7) of Section 31 of 1996 Act deals with award of interest when the arbitral award is for the payment of money. Sub-section (7) has two clauses. Clause (a) deals with interest for the period between the date on which the cause of action arose and the date on which the award is made. Clause (a) says that when the arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made, interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on*

*which the cause of action arose and the date on which the award is made. However, arbitral tribunal's power to award interest for the aforesaid period is subject to the agreement between the parties. Therefore, if the agreement stipulates that no interest is payable, the arbitral tribunal cannot award interest for the aforesaid period and an award contrary to the terms of the contract would be vulnerable to a challenge under Section 34 of 1996 Act. Moreover, such an agreement to waive interest is not ultra vires in terms of Section 28 of the Contract Act, 1872. However, if the agreement is silent on award of interest, the arbitral tribunal can award interest in terms of clause (a) of sub-section (7) of Section 31. As far as clause (b) of sub-section (7) of Section 31 is concerned, it deals with post-award interest. Prior to 2015 amendment, clause (b) mandated payment of interest on the sum awarded at the rate of 18% per annum from the date of the award to the date of payment, unless the award directed otherwise. Interestingly, clause (b) is not subject to an agreement between the parties and, therefore, if the arbitral award is with regard to payment of money, it would carry interest at such rate as the arbitral award directs and if it is not so directed, it would carry statutorily prescribed rate of interest from the date of the award till the date of payment. In a nutshell, the arbitral tribunal has jurisdiction to award interest for three distinct periods, namely, pre-reference, pendente lite, and future i.e., post-award. Award of pre-reference and pendente-lite interest is subject to the agreement between the parties whereas post award interest is statutorily governed and is not subject to the agreement between the parties. In other words, clause (b) does not give the parties the right to 'contract out' interest for the post award period.*

37. The appellant has canvassed a ground of principle of evidence for proof of a fact, however, the same cannot be adjudicated in the limited scope of interference under section 34 and 37 of the Act of 1996. The Hon'ble Apex Court in catena of judgments cited hereinabove has held that interference in arbitral award is limited to grounds provided under section 34 of the Act of 1996, which contemplates that if the award is against the policy of Indian law or patently illegal or shocks the conscience of the court, re-appreciation of evidence in the proceedings under section 34 and 37 of the Act 1996 is not permissible. It is not a case of no evidence. In fact, the ground is only shifting of burden of proof. However, when the ground raised by the appellant has been tested on the anvil of law laid down by the Honb'le

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Apex Court, this Court did not find any of the ground to make interference in the impugned award.

38. Thus, in view of the above enunciation of law, this Court, while exercising jurisdiction under Section 37 of the Act of 1996, exercises a very narrow and limited jurisdiction, which is even narrower than the parameters prescribed under Section 34(2)(b)(ii) of the Act of 1996. The appellant has failed to satisfy any of the parameters contemplated under Section 34 of the Act of 1996 and, accordingly, the application preferred by the appellant under Section 34 came to be dismissed. The appellant has failed to make out any case demonstrating that the order passed by the learned Civil/Commercial Court and the impugned award suffer from any patent illegality or against policy of Indian law warranting interference by this Court in exercise of its limited jurisdiction under Section 37 of the Act of 1996.

39. Accordingly, the appeal sans merit and is hereby **dismissed**.

(DEEPAK KHOT)
JUDGE

HS

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