

V.K. John Vs. S. Mukanchand Bothra and Huf (D) represented by LRS. & Ors.

Civil Appeal No. _____ of 2026 @ SLP (Civil) No. 16162/2023 · Supreme Court of India · 2026-04-20 · Sanjay Karol · Vipul M. Pancholi · F2J-C-1161

Full judgment text

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[Civil Appeal No. _____ of 2026 @ SLP (Civil) No. 16162/2023]

Sanjay Karol,J.

1. Leave granted.

2. The present appeal has been preferred against the judgment and order dated 03.02.2023, passed by the High Court of Judicature at Madras in CRP No. 676/2013, whereby Civil Revision Petition preferred by the appellant against arbitral award dated 21.02.2011 in Arbitration Case No. 1/20111 came to be dismissed.

Brief Facts

3. The genesis of the present lis is from a 'Deed of Agreement for Sale' entered into between one Mr. Appu John [alleged paternal uncle of the appellant] and Respondent No. 1 herein, S. Mukanchand Bothra, for the sale of the subject property on 20.04.20072. Thereafter, Mr. Appu John, passed away on 28.07.2007. Respondent No. 1 initiated arbitration against Respondent No. 2, A. Philip, in 2011, alleging violation of the above Agreement. The case of the appellant is that Mr. Philip has been falsely shown as the legal representative of Mr. Appu John.

4. An Award dated 21.02.2011 came to be passed by the learned Sole Arbitrator Vedavalli Kumar, in favor of Respondent No. 1 and thereby directed Respondent No. 2, A. Philip, to execute the sale deed. Consequently, an execution petition bearing number E.P. No. 17 of 2012 also came to be filed on 10.08.2011.

5. The case of the appellant is that he was only informed of the above arbitration proceedings on 28.08.2012. Thereafter, the appellant sought and has been impleaded in the execution petition mentioned above, vide order dated 14.09.2021 of the High Court of Judicature at Madras in A. Nos. 3800 - 3802 of 2012.

6. Prior thereto, in 1994, the appellant had initiated a suit against his uncle seeking partition of properties belonging to his paternal grandmother, which came to be numbered as CS No. 423 of 1995 before the High Court of Judicature at Madras. In the said suit, on 02.01.2018, a preliminary decree was passed in favor of the appellant, decreeing 1/3rd share in the subject property.

7. For the present lis, the appellant had assailed the arbitral award vide Civil Revision Petition No. 676 of 2013 before the High Court of Judicature at Madras. The High Court vide the impugned order dismissed the civil revision preferred by the appellant, while observing that as the appellant claims to be a legal representative of Mr. Appu John, the appropriate relief would lie under the Arbitration Act, and in view of such statutory remedy - the challenge under Article 227 of the Constitution cannot be permitted.

Our View

8. We have heard the learned counsel appearing on behalf of the appellant. We have also heard Mr. Gagan Bothra, respondent no. 3 - in person. As the other respondents have chosen not to enter appearance, this Court appointed Mr. Chakradhari Sharan Singh and Ms. Gauri Rajput, as amici curiae to assist the Court in this matter vide order dated 03.09.2025.

9. The issue which arises before us is whether the appropriate remedy for legal heirs aggrieved by an arbitral award would be a petition under Section 34 of the Arbitration & Conciliation Act, 19963 or a petition under Article 227 of the Constitution/Section 115 of the Code of Civil Procedure4?

10. The case of the appellant, in a nutshell, is that his uncle was unmarried and had no issues. The arbitral award stands vitiated as the appellant, who has a substantial claim over the subject property, has not been heard. Moreover, the arbitrator made no enquiry as to whether respondent no. 2 is actually the legal heir of Mr. Appu John. He further submits that the only recourse available to him was to file a petition for revision under Article 227 of the Constitution. As he was never made a party in the arbitration proceedings, he cannot challenge the said award under Section 34 of the Arbitration Act.

11. Respondent No. 3 has placed reliance on the judgments of this Court in Bhaven Construction v. Executive Engineer, Sardar Sarovar Narmada Nigam Limited and Anr.⁵ and Ravi Prakash Goel v. Chandra Prakash Goel⁶ to submit that since the specific case of the appellant is that he is the sole surviving legal heir of Mr. Appu John, the appropriate remedy lies under Section 34 of the Arbitration Act.

12. The amici curiae have taken a different view, whereby they state that there is no binding arbitration agreement inter se the parties. The award is not executable against successors-in-interest. However, considering the submissions raised at the bar, we seek to examine the issue of law raised before us without going into the merits of the arbitration agreement.

13. In the considered view of this Court, the appropriate relief for a legal representative to challenge an arbitral award is under Section 34 of the Arbitration Act and not under Article 227 of the Constitution/Section 115 of the CPC.

14. The Arbitration Act is a complete Code in itself. The object of the Act is to consolidate the laws pertaining to domestic arbitration, international arbitration and enforcement of foreign arbitral awards. Section 34 thereof enumerates the grounds on which a Court may set aside an arbitral award, upon an application made by a party. The relevant portion reads:

"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)."

(emphasis supplied)

15. Judicial interference beyond the scope and procedure enumerated under Section 34, must be exercised in 'exceptional rarity', as was observed by this Court in Bhaven Construction (supra), where the Court had the occasion to consider the scope of the above Section. It was observed:

"17. Thereafter, Respondent 1 chose to impugn the order passed by the arbitrator under Section 16(2) of the Arbitration Act through a petition under Articles 226/227 of the Indian Constitution. In the usual course, the Arbitration Act provides for a mechanism of challenge under Section 34. The opening phase of Section 34 reads as

"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)".

(emphasis supplied)

The use of term "only" as occurring under the provision serves two purposes of making the enactment a complete code and lay down the procedure.

18. In any case, the hierarchy in our legal framework, mandates that a legislative enactment cannot curtail a constitutional right. In Nivedita Sharma v. COAI [Nivedita Sharma v. COAI, (2011) 14 SCC 337 : (2012) 4 SCC (Civ) 947], this Court referred to several judgments and held : (SCC p. 343, para 11) It is therefore, prudent for a Judge to not exercise discretion to allow judicial interference beyond the procedure established under the enactment. This power needs to be exercised in exceptional rarity, wherein one party is left remediless under the statute or a clear "bad faith" shown by one of the parties. This high standard set by this Court is in terms of the legislative intention to make the arbitration fair and efficient."

(emphasis supplied)

16. At this stage, we must consider whether the term 'party' in Section 34, would include 'legal representatives' claiming thereunder. A 'legal representative' has been defined under Section 2(1)(g)

of the Act as:

"(g) "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased, and, where a party acts in a representative character, the person on whom the estate devolves on the death of the party so acting;"

17. For this purpose, it is pertinent to note that the scheme of the Arbitration Act, does not envision arbitration proceedings to cease with the death of a party. Section 35 of the Arbitration Act, extends the finality of an arbitral award not only to parties to the award, but also to 'parties claiming under them'. We also make reference to Section 40 which reads:

"40. Arbitration agreement not to be discharged by death of party thereto.-

(1) An arbitration agreement shall not be discharged by the death of any party thereto either as respects the deceased or as respects any other party, but shall in such event be enforceable by or against the legal representative of the deceased.

(2) The mandate of an arbitrator shall not be terminated by the death of any party by whom he was appointed.

(3) Nothing in this section shall affect the operation of any law by virtue of which any right of action is extinguished by the death of a person."

18. In our view, when the scheme of the Act is towards continuity of arbitral proceedings, in the event of death of a party, the natural corollary, evident from the definition clause itself, is that upon the death of a party, legal representatives' step into the shoes of a party for the purposes of the Act. Similarly, this Court in *Rahul Verma and Ors. v. Rampat Lal Verma and Ors.*⁷, while permitting legal heirs of a deceased partner to invoke arbitration under the agreement therein, had noted that upon the death of the deceased, the legal heirs had 'stepped into the shoes of the deceased' and therefore, the arbitration clause continues to bind all concerned parties.

19. Moreover, in the considered view of this Court, when an award has been made enforceable against the legal representatives of a deceased party under the Act, the right to challenge such an award, which is available under the Act to the parties, also has to naturally flow to the said legal representatives. This Court, while permitting the legal representatives of a deceased partner of a partnership firm to initiate arbitration, in *Ravi Prakash Goel (supra)*, as rightly submitted by Respondent No. 3 had observed as under:

"18. It is clear from Section 40 of the Arbitration Act that an arbitration agreement is not discharged by the death of any party thereto and on such death it is enforceable by or against the legal representatives of the deceased, nor is the authority of the arbitrator revoked by the death of the party appointing him, subject to the operation of any law by virtue of which the death of a person extinguishes the right of action of that person.

20. The definition of "legal representative" became necessary because such representatives are bound by and also entitled to enforce an arbitration agreement. Section 40 clearly says that an arbitration agreement is not discharged by the death of a party. The agreement remains enforceable by or against the legal representatives of the deceased. In our opinion, a person who has the right to represent the estate of the deceased person occupies the status of a legal person (sic representative).

Section 35 of the 1996 Act which imparts the touch of finality to an arbitral award says that the award shall have binding effect on the "parties and persons claiming under them". Persons claiming under the rights of a deceased person are the personal representatives of the deceased party and they have the right to enforce the award and are also bound by it. The arbitration agreement is enforceable by or against the legal representative of a deceased party provided the right to sue in respect of the cause of action survives."

(emphasis supplied)

20. Taking into view the above observations, denying a legal representative the right to challenge an award under Section 34, would defeat the very object of the Arbitration Act, and its purpose as a self-contained complete Code of dispute resolution. Furthermore, as discussed above, such an interpretation is also in furtherance of continuity of arbitral proceedings as envisioned under the Arbitration Act. Moreover, in our view, legal representatives of a deceased party cannot be made

remediless under the statute on one hand, and on the other hand being made liable to fulfill the award.

21. Lastly, we are also not inclined to accept the conflicting stand of the appellant, where at one stage he submits that he is the sole surviving legal heir of Mr. Appu John, and on the other states that he does not represent the estate of Mr. Appu John.

22. Therefore, the view taken by the High Court vide the impugned order is correct in law and consequently, upheld. As a result thereof, the present appeal is dismissed. The impugned order of the High Court of Judicature at Madras dated 03.02.2023 in CRP No. 676/2013 is affirmed.

23. Needless to add, the appellant is permitted to exercise his remedies under the Arbitration Act. Any such petition, if so filed, is to be decided on its own merits. Limitation for filing such petition shall run from the date of this judgment.

24. Pending applications, if any, shall stand dismissed.

.....J. (Sanjay Karol)

.....J. (Vipul M. Pancholi)

New Delhi

April 20, 2026

1 Hereinafter 'the Arbitral Award'.

2 Hereinafter 'the Agreement'.

3 Hereinafter 'the Arbitration Act'.

4 Hereinafter 'CPC'.

5 (2022) 1 SCC 75.

6 (2008) 13 SCC 667.

7 2025 SCC OnLine SC 578.

Source disclosure: Complete sanitized public judgment text retained for research; official-primary replacement remains pending.

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