

ARBITRA

Your Monthly Guide to Navigate the Evolving Landscape of Arbitration



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Boundaries of Intervention Defined, our cover story this month dives into the Supreme Court's ruling in **Balaji Steel Trade Versus Fludor Benin S.A. & Ors.**, which firmly re-establishes party autonomy and draws a clear line around judicial intervention in foreign-seated arbitrations.

Next, in our in-depth analysis, we unpack the public-policy challenge to contractually agreed interest rates and why a 24% rate by itself cannot be grounds to set aside an award.

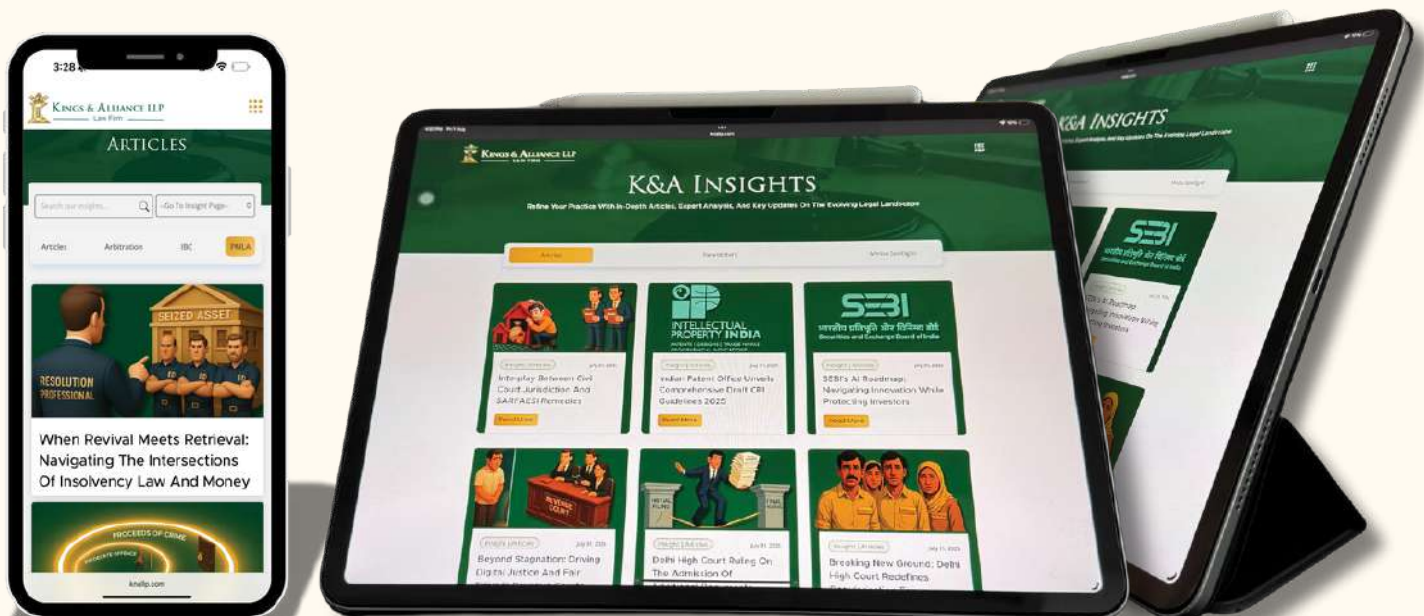
We then examine how parties are attempting to weaponise a brief quorum shortfall to derail an otherwise valid arbitration, and what the Bombay High Court had to say about it.

This edition also explores what truly qualifies as an arbitration agreement, clarifying that the mere presence of the word "arbitration" in a clause doesn't automatically bind parties to arbitrate.

Alongside these features, we bring you key rulings from various High Courts, global regulatory updates, and a curated list of must-attend trainings and events shaping the arbitration landscape.

Let's dive in.

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COVER STORY

A Question of Jurisdiction: When Does Indian Law Yield to International Arbitration?



Indian courts lack the jurisdiction to appoint an arbitrator for a foreign-seated arbitration, irrespective of the Indian nationality or domicile of any party.

Imagine an Indian company locked in a bitter commercial dispute with a foreign counterpart, their contract explicitly stating that any conflict must be resolved through arbitration in a country thousands of miles away under that nation's laws. When the dispute flares up, and one party rushes to an Indian court, can the local judiciary step in to appoint an arbitrator, or must it bow to the parties' original foreign agreement? This pivotal question, touching upon the delicate balance between party autonomy in international commerce and the jurisdictional limits of domestic courts, was recently settled by the Supreme Court of India in *Balaji Steel Trade Versus Fludor Benin S.A. & Ors.* In a ruling that underscores the supremacy of a foreign-seated arbitration clause, the Court definitively held that “Indian courts lack the jurisdiction to appoint an arbitrator for a foreign-seated arbitration, irrespective of the Indian nationality or domicile of any party.”

The controversy before the bench of Justices PS Narasimha and Atul S Chandurkar centered on a dispute arising from a Buyer–Seller Agreement (BSA) that clearly stipulated the arbitration seat would be Benin and governed by Beninese law. The petitioner, Balaji Steel, attempted to invoke later ancillary contracts containing Indian arbitration clauses and the Group of Companies (GoC) doctrine to argue for a domestic proceeding. The Supreme Court, however, dismissed this plea, recognizing the BSA as the principal contract and thereby confirming Benin as the undisputed juridical seat. The Court’s firm rejection of the plea illuminates a critical principle in the sphere of international commercial arbitration...



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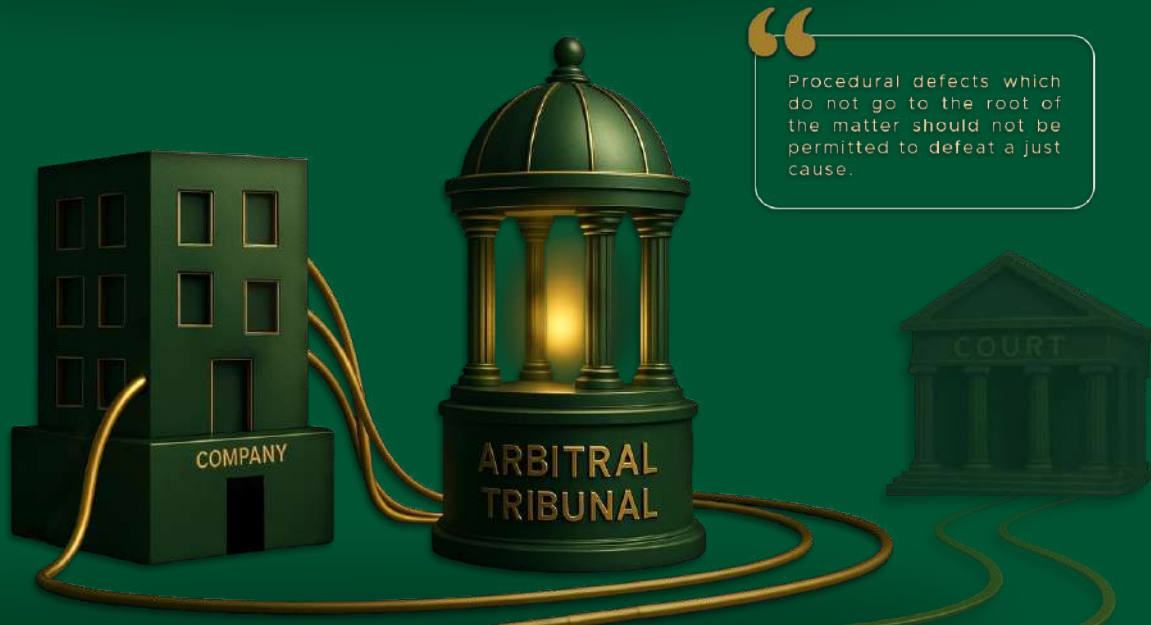
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PIVOTAL ISSUES

Masters of Procedure: Judicial Restraint and the Resilience of the Arbitral Tribunal Under Sections 5 and 19



In the dynamic landscape of commercial disputes, a critical question often arises: Can a procedural deficiency, such as a company's temporary failure to meet its internal quorum requirements, be used as a sword to completely dismantle a properly invoked legal process, declaring the entire action "void ab initio"? This highly contentious issue recently found its way before the Bombay High Court, which definitively held in *Master Drilling India Private Limited Versus Sarel Drill & Engineering Equipment India Private Limited* that a company's invocation of arbitration is not rendered non est simply because it had one director, contrary to the quorum requirements of Section 174(2) of the Companies Act. The court was examining a challenge under Section 34 of the Arbitration Act, directed against an Arbitral Tribunal's decision that refused to terminate the ongoing proceedings at the threshold.

This dispute arose from a Business Agreement between Sarel Drill and Master Drilling, following which Sarel Drill invoked arbitration. Master Drilling sought to terminate the proceedings, arguing the arbitration was void ab initio because Sarel Drill had only one director when arbitration was invoked, violating the statutory quorum. The Tribunal dismissed the application, deeming it an issue requiring evidence, and the High Court subsequently dismissed the Section 34 petition. The key legal conundrum at the heart of the matter was the nature and challengeability of an Arbitral Tribunal's interlocutory order refusing to terminate proceedings on such a technical, preliminary ground. This article delves into the foundational legal principles—specifically concerning the scope of an...



PIVOTAL ISSUES

Mapping the True Limits of Judicial Review on Interest Rates in Indian Arbitration



Interference is only warranted if the interest rate awarded is so perverse and so unreasonable so as to shock the conscience of the Court.



In the fiercely competitive landscape of modern finance, commercial entities often enter into loan agreements bearing a demanding 24% annual interest rate terms that reflect the high-risk, high-reward nature of lending to businesses. When a borrower defaults, and an arbitral tribunal later upholds an award calculated based on this rate, a critical legal question arises: Can the judiciary intervene and strike down the interest, deeming it an oppressive term that violates fundamental Indian public policy?

This very question lay at the heart of a recent landmark ruling by the Supreme Court of India. In a decisive move, the bench of Justices JB Pardiwala and KV Viswanathan in *Sri Lakshmi Hotel Pvt. Limited & Anr. Versus Sriram City Union Finance Ltd. & Anr.*, upheld the validity of charging a 24% interest rate stipulated in a commercial loan agreement, affirming that the rate itself did not violate the fundamental policy of Indian law.

The issue stemmed from a dispute involving a Non-Banking Financial Company (NBFC) and borrowers who had defaulted on two loan agreements from 2006, which expressly provided for the 24% per annum interest rate. The subsequent arbitral award in favor of the NBFC was challenged, essentially questioning whether such an exorbitant interest rate could stand scrutiny under the grounds of public policy as defined in the Arbitration and Conciliation Act, 1996. This judgment powerfully underscores the primacy of contractual agreement in commercial dealings, even when the terms seem onerous. The ruling provides critical...

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PIVOTAL ISSUES

Why Denial of Inspection is the Death Knell for Arbitral Due Process

EQUALITY IS NOT OPTIONAL



The parties shall be treated with equality and each party shall be given a full opportunity to present his case.

The sanctity of any dispute resolution process, be it litigation or arbitration, rests on the fundamental promise of a fair opportunity to be heard and defend one's case. In a recent ruling, the Bombay High Court sharply reinforced this principle in *Iqbal Trading Company v. Union of India & Ors.*, by setting aside an arbitral award and the order upholding it, on the ground that the Arbitral Tribunal's refusal to grant a party access to crucial documents and its failure to provide a reasoned judgment amounted to a grave violation of natural justice and due process. This judgment, which arose from an appeal filed by Iqbal Trading Company against the Union of India, demands a thorough examination of the legal framework governing arbitral challenges in India.

The journey to determining the validity of the Arbitral Award first required establishing the correct governing statute, a procedural wrong that can vitiate the entire process. Here, the court found the District Judge's Impugned Order fundamentally wrong in holding that the Arbitration Act, 1940, applied. Why was this finding incorrect? the 1996 Act, which came into force on January 25, 1996, makes it "abundantly clear" under Section 85(2)(a) that the old 1940 Act would not apply to proceedings commenced after this date. Under Section 21 of the 1996 Act, arbitration proceedings formally commence when the request for arbitration is received. Since the Arbitral Tribunal was constituted and entered reference in April 1996, well after the 1996 Act came into force, the Court affirmed the prior Liberty Order that the 1996 Act was the only law applicable. This crucial finding not only invalidated the District...



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PIVOTAL ISSUES

Is a Name Enough? The Fine Line Between Contractual Language and Intent



“The mere use of the term “arbitration” is insufficient to mandate a reference to arbitration unless the underlying intent to resolve disputes through that mechanism is unequivocally present.”

In the complex tapestry of commercial contracts, a single word "arbitration", often acts as a beacon, promising a swift, confidential, and binding resolution to disputes. But what happens when that beacon proves to be a mere linguistic illusion? Does the presence of the word, repeated even multiple times, guarantee the mechanism it describes? The Supreme Court recently in a judgement authored by Justice Dipankar tackled this critical question, delivering a judgment that underscores a fundamental principle of dispute resolution: “the mere use of the term "arbitration" is insufficient to mandate a reference to arbitration unless the underlying intent to resolve disputes through that mechanism is unequivocally present.”

The case before the apex court involved Alchemist Hospitals and ICT Health, where a dispute arising from a Software Implementation Agreement hinged on a clause titled "Arbitration." Despite the title, this clause stipulated that unresolved issues would first be referred to the respective companies' Chairmen, with the final avenue being the civil courts. The ensuing legal battle centered on whether this clause was a valid arbitration agreement that would allow Alchemist Hospitals to compel arbitration under Section 11(6) of the A&C Act. This article delves into the foundational legal principles and judicial precedents, including the doctrine of consensus ad idem and the essentials of a valid arbitration agreement that formed the bedrock of this significant ruling. The starting point for this legal inquiry is Section 7 of the A&C Act. This provision, modeled on the UNCITRAL Model Law and deeply rooted in party autonomy, defines an "arbitration agreement" as an agreement by...



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SIGNIFICANT CASE LAWS

Unconditional Stay of Arbitral Awards Allowed Only in Rare Cases: Supreme Court

In the case of **Popular Caterers v. Ameet Mehta & Ors.**, the Supreme Court declined to grant an unconditional stay on the execution of an arbitral award, holding that such relief is permissible only in exceptional circumstances as laid down in **Lifestyle Equities C.V. v. Amazon Technologies Inc.** The bench of Justices JB Pardiwala and KV Viswanathan reiterated that an unconditional stay may be granted only when an award is **egregiously perverse, patently illegal, facially untenable**, or falls within other comparable exceptional categories. Since the present case involved **no allegation of fraud or corruption**, the specific ground under the second proviso to Section 36(3) of the Arbitration Act was not attracted. The Court emphasised that the award was merely a **money decree**, and the judgment-debtors had failed to demonstrate any exceptional ground warranting such extraordinary relief.

The dispute originated from a 2017 MoU between Popular Caterers and Maple Leaf Enterprises LLP for catering services at Mumbai's Tulip Star Hotel, under which Popular Caterers paid a **₹4-crore security deposit**. After governmental restrictions prevented the hotel from hosting events, the arrangement collapsed, and the arbitrator directed Maple Leaf's promoters to refund the deposit with interest. When Maple Leaf challenged the award under Section 34, the Bombay High Court admitted the petition and granted an **unconditional stay**, preventing Popular Caterers from recovering the amount. The Supreme Court held that the High Court had overlooked the governing principles and had failed to consider whether any "exceptional case" had been made out.

Holding that none of the statutory or judicially recognised grounds existed, the Supreme Court set aside the High Court's order and **allowed the appeal**, reiterating that unconditional stays cannot be granted as a matter of course and require a high threshold of perversity or illegality none of which were present in this case.



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SIGNIFICANT CASE LAWS

Indian Courts Lack Jurisdiction for the Appointment of Arbitrator In Foreign-Seated Arbitration: Supreme Court

In the case of **Balaji Steel trade v. Fludor Benin S.A. & Ors.**, the Supreme Court held that **Indian courts have no jurisdiction to appoint an arbitrator in a foreign-seated arbitration**, even if one of the parties is an Indian entity. The bench of Justices PS Narasimha and Atul S. Chandurkar emphasized that when the principal agreement clearly provides a **foreign seat** and **foreign governing law**, Section 11(6) of the Arbitration and Conciliation Act, 1996 cannot be invoked. Relying on BALCO and BGS SOMA JV, the Court reaffirmed that **Part I of the Act does not apply to foreign-seated arbitrations**, and any attempt to confer jurisdiction on Indian courts by relying on ancillary contracts with different arbitration clauses is legally untenable. The Court also rejected the reliance on the **Group of Companies doctrine**, reiterating that it applies only where there is compelling evidence of mutual intention to bind a non-signatory, which was absent in this case.

In brief, the dispute arose from a **Buyer–Seller Agreement (BSA) dated 06.06.2019**, the “mother agreement,” which expressly stipulated that arbitration would be held in **Benin** under **Beninese law**. The petitioner, Balaji Steel, attempted to rely on later Sales Contracts and High Seas Sale Agreements—containing Indian-seated arbitration clauses—to argue for domestic arbitration. The Court held that these later contracts were merely ancillary, executed for isolated shipments, and could not override the BSA. Since all alleged breaches stemmed directly from the BSA, the **juridical seat** remained Benin, and the petition under Section 11(6) was “**fundamentally misconceived and contrary to the statutory scheme.**”

Finding no jurisdictional basis or factual foundation for invoking Indian courts, and noting the petitioner’s inconsistent litigation conduct, the Supreme Court **dismissed the arbitration petition.**



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SIGNIFICANT CASE LAWS

Arbitral Award Upheld; Cancellation of Recruitment Exam Not Ground for Frustration of Contract: Bombay High Court

In the case of **State of Uttar Pradesh Through Uttar Pradesh Legislative Assembly Secretariat v. Tata Consultancy Services Limited**, the Bombay High Court held that the cancellation of the recruitment examination by the Speaker of the Uttar Pradesh Legislative Assembly was a **self-induced act**, and therefore **could not constitute frustration of contract under Section 56** of the Indian Contract Act. Upholding the arbitral award in favour of Tata Consultancy Services (TCS), the Court ruled that the Secretariat could not avoid its payment obligations after TCS had fully performed its contractual duties. Relying on Pashupati Nath Sukul, the Court further held that the Legislative Assembly Secretariat **cannot be treated as distinct from the State of Uttar Pradesh**, and for enforcement purposes both form part of “Government.” It also rejected the argument that TCS was entitled only to reimbursement, clarifying that **completion of essential contractual services entitled TCS to the full contract price**.

In brief, TCS had been engaged under a 2015 agreement to conduct online recruitment examinations for over **7,000 candidates**, for which it raised invoices totalling **₹3.11 crore**. The Speaker later cancelled the exam citing alleged irregularities in an unrelated Railway Recruitment Board exam and terminated the contract, leading to non-payment. The arbitral tribunal found the termination illegal, and the Secretariat challenged the award under Section 34. The High Court noted that TCS had already conducted the examination, that only approval for publishing results remained, and that an STF report found **no wrongdoing by TCS**. Citing Boothalinga Agencies, the Court reiterated that **self-induced frustration cannot absolve contractual liability**, and that Section 70 was inapplicable because a **concluded commercial contract** governed the parties.

Finding no merit in the challenge, the Court dismissed the petition, holding that the Speaker’s voluntary cancellation — after performance was complete — could not be used to evade payment, and the arbitral award in favour of TCS stood affirmed.



SIGNIFICANT CASE LAWS

Power To Extend Arbitrator's Mandate Vests in Civil Court of Original Jurisdiction, Not Appointing Court: Telangana High Court

In the case of **M/s. ESI Corporation vs. M/s. Quality Care India Limited (CARE Hospitals)**, the Telangana High Court held that the power to extend an arbitrator's mandate under **Section 29A(4)** of the Arbitration and Conciliation Act, 1996 lies **not with the court that appointed the arbitrator under Section 11(6)**, but with the **"court" defined in Section 2(1)(e)**—that is, the principal civil court of original jurisdiction. Justice P. Sam Koshy emphasized that the legislative scheme draws a deliberate distinction between the authority competent to appoint an arbitrator and the authority empowered to extend the mandate, and that if the legislature intended both powers to rest with the same forum, it would have expressly provided so. Since Section 29A(4) refers exclusively to the civil court of original jurisdiction, the High Court found no illegality in the trial court's order extending the mandate.

In brief, the dispute arose from agreements executed between ESI Corporation and CARE Hospitals in 2013 and 2014. After disputes emerged, an arbitrator was appointed under Section 11, but the proceedings lapsed upon expiry of the statutory period. CARE Hospitals then filed applications under Section 29A seeking extension of time, including exclusion of the COVID-19 period. The City Civil Court granted an **eight-month extension**, prompting ESI to file a revision petition contending that only the High Court could extend the mandate. Rejecting this, the High Court noted that the trial court had exclusive jurisdiction under the statute and that precedents from High Courts with ordinary original civil jurisdiction did not apply in Telangana.

Finding no merit in the challenge, the High Court dismissed the Civil Revision Petition, holding that the **power to extend an arbitrator's mandate vests solely in the civil court of original jurisdiction** as per Section 2(1)(e) of the Act.



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SIGNIFICANT CASE LAWS

Section 8 Application Not Maintainable Without Written Arbitration Agreement: Calcutta High Court

In the case of **Flint Group India Pvt. Ltd. v. Sujay Lodha**, the Bombay High Court held that the cancellation of the recruitment examination by the Speaker of the Uttar Pradesh Legislative Assembly was a **self-induced act** and therefore **could not amount to frustration of contract under Section 56** of the Indian Contract Act. Upholding the arbitral award in favour of Tata Consultancy Services (TCS), the Court held that the Secretariat could not evade its payment obligations after TCS had fully performed the contracted services. It further ruled, following **Pashupati Nath Sukul**, that the Legislative Assembly Secretariat **cannot be treated as distinct from the State of Uttar Pradesh** for enforcement purposes, and rejected the contention that TCS was entitled only to reimbursement, clarifying that **completion of essential services entitled it to the full contract price**.

In short, TCS had been engaged under a 2015 agreement to conduct online recruitment examinations for more than **7,000 candidates**, raising invoices of **₹3.11 crore** after completing the work. The Speaker later cancelled the exam citing alleged irregularities in an unrelated Railway Recruitment Board exam and terminated the contract, resulting in non-payment. The arbitral tribunal held the termination illegal, and the Secretariat challenged the award under **Section 34**. The Court found that TCS had already conducted the examination and only needed approval to publish the results, and an STF report confirmed no wrongdoing by TCS. Applying *Boothalinga Agencies*, the Court reiterated that **self-induced frustration cannot absolve contractual liability**, and that **Section 70** was inapplicable because a **concluded commercial contract** governed the parties.

Finding no ground to interfere, the Court dismissed the petition and affirmed that the Speaker's voluntary cancellation, after full performance by TCS, could not be used to avoid payment under the agreement.



[VIEW JUDGEMENT](#)



SIGNIFICANT CASE LAWS

Dispute on Interest Rate Not Ground to Set Aside Award Under Public Policy: Supreme Court

In the case of **Sri Lakshmi Hotel Pvt. Ltd. & Anr. vs. Sriram City Union Finance Ltd. & Anr.**, the Supreme Court held that the award of **24% interest** in a commercial loan dispute did **not violate the fundamental policy of Indian law**, and therefore could not be set aside under **Section 34 of the Arbitration and Conciliation Act, 1996**. A bench of Justices JB Pardiwala and KV Viswanathan observed that challenges based on public policy cannot be invoked merely because a party disputes the **rate of interest**, which falls outside the scope of such review unless the rate is **so perverse as to shock the conscience of the court**. The Court reaffirmed that contemporary commercial lending often involves higher rates due to increased market risk, and that such rates cannot be considered immoral or contrary to justice when agreed to voluntarily. It further emphasised that **Section 31(7)(a)** makes the arbitrator's discretion subordinate to the parties' contract.

In brief, the dispute arose from two **2006 loan agreements** under which the appellants borrowed **₹1.57 crore** from a Non-Banking Financial Company (NBFC), with an agreed interest rate of **24% per annum**. After the borrowers defaulted, arbitration was initiated and an award was passed in favour of the lender. The borrowers challenged the award, arguing that the interest rate was exorbitant and contrary to public policy. Both the High Court and the arbitral tribunal rejected this contention.

The Supreme Court upheld those findings, holding that the **contractual rate** could not later be questioned as excessive when freely negotiated between commercial parties, and that high rates often reflect lender risk in competitive markets. Finding no perversity or illegality, the Court **dismissed the appeal**, affirming the arbitral award in full.



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REGULATORY UPDATE:

Transnational Justice: Bahrain Launches Commercial Court with Direct Appeal to the SICC

BICC

Bahrain International Commercial Court

The Kingdom of **Bahrain** has significantly elevated its status as a global dispute resolution hub with the launch of the **Bahrain International Commercial Court (BICC)** on November 5, 2025. This initiative is not merely the creation of a new court; it introduces an unprecedented **transnational appeal mechanism** that allows parties to appeal BICC judgments to the **Singapore International Commercial Court (SICC)**. This bold move creates a novel legal pathway set to redefine how international commercial disputes are resolved in the Middle East and North Africa (MENA) region. For legal professionals advising on cross-border transactions and litigation strategy, the BICC presents a compelling new venue.

The most distinctive feature of the BICC is the appellate route. Appeals from the BICC will be heard by the **International Committee of the SICC**, a panel comprising local and international SICC judges, alongside ad hoc judges from the BICC. This structure leverages the SICC's decade-long reputation for neutrality and international expertise, providing an error-correction mechanism rooted in a globally respected jurisdiction. The SICC's bench boasts leading international and local judges, including former chief justices from the UK, Australia, and Canada. Critically, judgments issued by the International Committee will be treated as Bahraini judgments for the purpose of enforcement. This provides immediate clarity and assurance on enforceability. The BICC itself is helmed by a distinguished bench...

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Organised By: International Bar Association (IBA)



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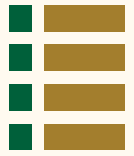
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