

ARBITRA

Your Monthly Guide to Navigate the Evolving Landscape of Arbitration



COVER STORY

Section 29A After Viva Highways
Is Substitution of Arbitrator Mandatory Upon Expiry of Mandate? 04

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- A. Navinchandra Steel Private Limited & Ors. v. Board of Directors of Abhyudaya Co-Op. Bank Ltd. & Ors.
- Shree Dev Shasan Jain Shwetambar Murtipujak Trust v. Veer Tower Cooperative Housing Society Ltd.
- J. Muthurajan & Anr. v. S. Vaikundarajan & Ors.
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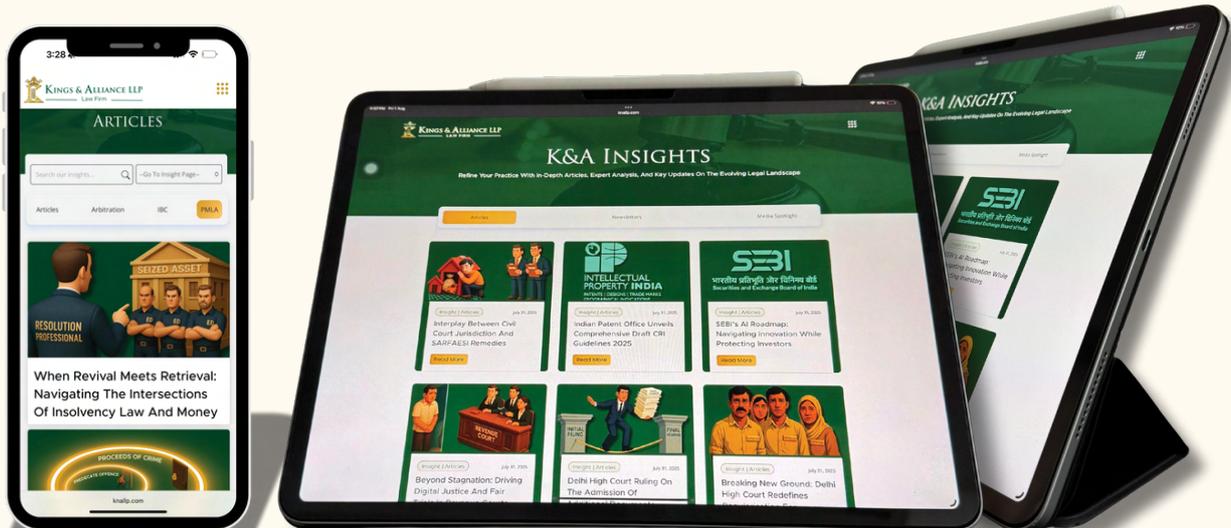
Adjudication Over Assertion, our cover story of this month captures a fundamental shift in Indian arbitration, examining how the Supreme Court has anchored the power of substitution to the sanctity of due process. This evolution marks a turning point where the law prioritizes the continuity of justice over the mechanical expiry of a clock, ensuring that the deprivation of a mandate is a result of equity rather than mere technicality.

This edition of **ARBITRA** further explores the "accountability revolution" in ensuring that awards are not rendered "paper tigers" through the eleventh-hour alienation of property. We navigate the boundaries of judicial power concerning whether a court can nullify arbitral proceedings under Section 15(2) and analyze the necessity of finality by looking at the application of res judicata to judicial appointments under Section 11. We also take a fascinating look at the strategic importance of how Section 21 notices now shield interim reliefs and limitation claims, providing a definitive safeguard for substantive rights.

From decoding the pro-arbitration thresholds in Akankha Nirman to the pragmatic test of "Intelligible Reasoning" in Jones Lang Lasalle, this month's digest is designed to help you master the boundaries of modern corporate and arbitral liability. As the legal framework moves toward transparency over technicality and equity over rigid mandates, we invite you to explore the insights that are keeping the industry ahead of the curve.

Let's dive in.

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COVER STORY 04

Section 29A After Viva Highways: Is Substitution of Arbitrator Mandatory Upon Expiry of Mandate?



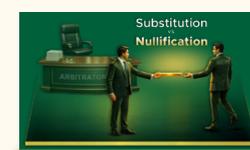
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Supreme Court Applies Lis Pendens and Order 21 Rule 102 CPC to Execute a Money Decree and Arbitral Award Against Subsequent Transferees



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The Limits of Judicial Intervention: Can a Court Nullify Arbitral Proceedings Under Section 15(2)?



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The Finality of Judicial Appointment: Res Judicata and the Evolution of Section 11 in Indian Arbitration



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Section 21 and Commencement Paradox: Resolving Interim Relief Expiry and Limitation Volatility



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COVER STORY

Section 29A After Viva Highways: Is Substitution of Arbitrator Mandatory Upon Expiry of Mandate?

Curative Extension or Ab Initio



Does a ticking clock have the power to kill a legal mandate, or is the court the final master of time? For decades, Indian arbitration was characterised by a "culture of delay" that transformed private dispute resolution into a marathon without a finish line. The 2015 introduction of Section 29A was intended as a corrective to this inefficiency, imposing a strict 12 month deadline to force a conclusion. Yet, this legislative fix birthed a new systemic crisis: when the clock runs out, must the arbitrator be sacrificed for the sake of discipline, or should the process be salvaged for the sake of continuity?

At the heart of this tension lies a legal paradox. Under Section 29A(4), the expiration of time triggers a "self-operating" termination of the arbitrator's mandate, a statutory death sentence for the proceedings. However, this death is conditional; the court retains the unique power to retroactively revive the mandate, acting as a temporal bridge between a lapsed deadline and a final award. The true friction, however, came to light under Section 29A(6). As courts weighed whether to extend these deadlines, a fundamental question divided the bench: is the power to "substitute" an arbitrator a mandatory penalty for delay, or a discretionary tool to be used only when the process has fundamentally broken down? The debate pitted strict statutory discipline against practical continuity asking if "we should burn the house down to punish a slow builder", or simply grant more time to finish the roof. With the landmark ruling in Viva Highways Ltd vs. MPRDC (2026), the Supreme Court has settled this tug-of-war, decisively correcting the perception of judicial "obligation." The...

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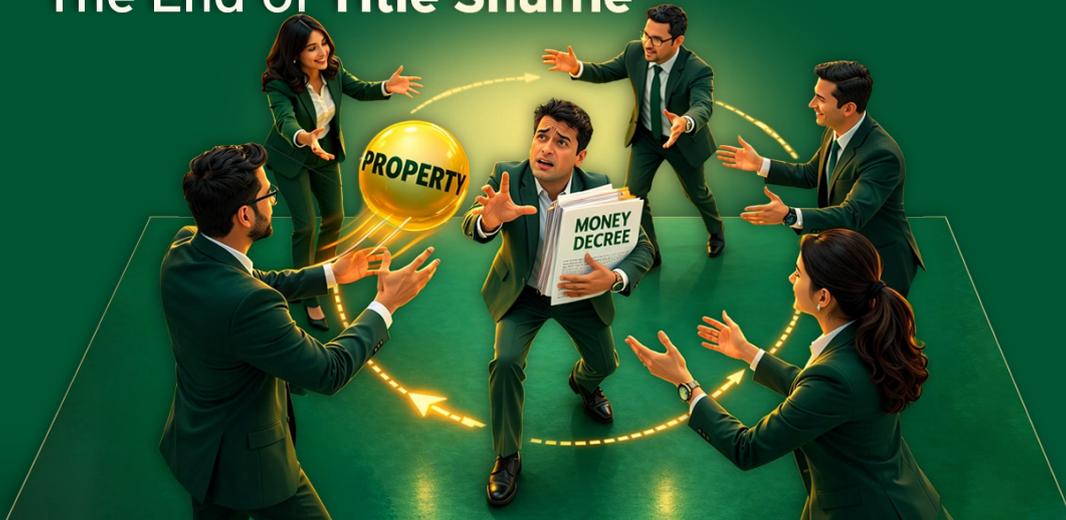


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PIVOTAL ISSUES

Supreme Court Applies Lis Pendens and Order 21 Rule 102 CPC to Execute a Money Decree and Arbitral Award Against Subsequent Transferees

LIS PENDENS The End of Title Shuffle



Can a judgment debtor render a money decree a "paper tiger" by simply alienating their property before a decree-holder can execute it? In the significant ruling of *R. Savithri Naidu v. M/s The Cotton Corporation of India Limited and Another*, the Supreme Court of India answered with a resounding "no," affirming that the doctrine of lis pendens and the restrictions under Order XXI Rule 102 of the Code of Civil Procedure (CPC) apply with full force to money decrees and arbitral awards. The Court clarified that a purchaser who acquires property after the institution of proceedings or the passing of an award is a transferee pendente lite, meaning they cannot obstruct the execution of that decree by claiming to be a bona fide purchaser without notice.

The dispute originated from a 1998 sale agreement for cotton bales between The Cotton Corporation of India (Respondent No. 1) and M/s Lakshmi Ganesh Textiles Limited (Respondent No. 2). Following a default in payment, an arbitral award was passed on June 11, 2001, in favor of Respondent No. 1 for approximately ₹26 lakh plus 18% interest. Although Respondent No. 2 challenged this award under Section 34 of the Arbitration and Conciliation Act, the challenge was dismissed in 2013 and became final. The Appellant, R. Savithri Naidu who was the mother of Respondent No. 2's Managing Director and a former non-executive director purchased the subject property from the company on April 23, 2015, via a tripartite agreement. When Respondent No. 1 sought to attach this property in 2019 to satisfy the long-standing arbitral award, the Appellant filed an objection under Order XXI Rule 58...

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PIVOTAL ISSUES

The Limits of Judicial Intervention: Can a Court Nullify Arbitral Proceedings Under Section 15(2)?



Can a court, while exercising its statutory power to substitute an arbitrator under Section 15(2) of the Arbitration and Conciliation Act, 1996, also exercise a supervisory jurisdiction to declare prior arbitral proceedings as a nullity? This was the primary legal issue addressed by the Supreme Court of India in *Ankhim Holdings Pvt. Ltd. & Anr. v. Zaveri Construction Pvt. Ltd.* (2026). The Court held that the scope of Section 15(2) is strictly limited to the appointment of a substitute arbitrator and does not extend to an adjudication upon the validity of orders passed by the previous tribunal. By setting aside the High Court's declaration that proceedings conducted during an insolvency moratorium were void, the Supreme Court upheld the principle of minimal judicial interference and the finality of interim orders under the Act.

The background involves a partnership between the appellants and the respondent for a slum redevelopment project. Following the emergence of disputes, a sole arbitrator was appointed by the High Court. Subsequently, the National Company Law Tribunal (NCLT) initiated the Corporate Insolvency Resolution Process (CIRP) against the respondent, attracting the moratorium under Section 14 of the Insolvency and Bankruptcy Code (IBC). During this moratorium period, the arbitral tribunal continued to function, passing several orders under Section 16 regarding its jurisdiction and Section 17 regarding interim measures, which facilitated the sale of residential units to third-party purchasers. Upon the original arbitrator's recusal, the appellants moved the High Court under Section 15(2) for the...

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PIVOTAL ISSUES

The Finality of Judicial Appointment: Res Judicata and the Evolution of Section 11 in Indian Arbitration

Reopening Arbitration Clauses After **JUDICIAL APPOINTMENT**



In the complex landscape of Indian arbitration law, can a court re-evaluate the very existence of an arbitration clause after a judicial authority has already appointed an arbitrator? This fundamental question lies at the heart of the Supreme Court of India's decision in *M/s Eminent Colonizers Private Limited v. Rajasthan Housing Board and Ors.* The Court decisively answered that under the pre-2015 arbitration regime, an order appointing an arbitrator carries the weight of *res judicata*. When a court, acting under Section 11, interprets a contract and proceeds to appoint an arbitrator, that judicial determination creates a definitive legal seal. If the parties fail to challenge this appointment order at its inception, they are effectively estopped from later disputing the validity or existence of the arbitration clause. This prohibition extends throughout the entire lifecycle of the dispute, meaning the jurisdictional "gate" cannot be reopened before the arbitral tribunal itself, nor can it be used as a ground for reversal during subsequent set-aside proceedings under Section 34. Essentially, once the court validates the clause through the act of appointment, that finding becomes a settled legal fact that the parties must live with, regardless of any later second-guessing. The dispute originated from construction contracts awarded to the appellant by the Rajasthan Housing Board in 2007 and 2009 for housing projects in Jaipur. In both instances, the appellant completed the work but encountered disputes regarding unpaid escalation bills for labor and material costs. When the respondents failed to settle these claims or properly constitute a "Standing Committee" as mandated by Clause 23 of the agreement, the appellant approached the High Court under Section 11 of the Arbitration and...

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PIVOTAL ISSUES

How Section 21 Notices Now Shield Interim Reliefs and Limitation Claims

When the Clock Starts Ticking



At what precise moment does an arbitration legally begin: when a court is approached to appoint an arbitrator, when the tribunal is finally constituted, or the moment a formal notice is delivered to the opposing party? The Supreme Court of India, in its landmark ruling in *Regenta Hotels Pvt. Ltd. v. Hotel Grand Centre Point & Ors.*, has provided a definitive answer to this long-standing procedural dilemma. The Court held that the "commencement" of arbitral proceedings is a statutory event triggered exclusively by the respondent's receipt of a notice invoking arbitration, as prescribed under Section 21 of the Arbitration and Conciliation Act, 1996. By anchoring this commencement to a singular, verifiable event of communication, the Court has dismantled the technical barriers that previously threatened the validity of interim reliefs and the calculation of limitation periods. This decision ensures that the substantive rights of parties are no longer held hostage by the procedural delays inherent in judicial appointments or the nuances of court-led arbitrator selection. The dispute at the heart of this ruling began with a franchise agreement between Regenta Hotels and M/s Hotel Grand Centre Point. When business differences surfaced, the Appellant successfully obtained interim injunctive relief from a trial court in February 2024. Subsequently, in April 2024, the Appellant issued a formal notice invoking arbitration under Section 21 of the Act. However, when the parties could not agree on an arbitrator, the Appellant moved the High Court of Karnataka under Section 11 for a judicial appointment. The litigation took a sharp turn when both the trial court and the High Court vacated the interim protection, reasoning that under Section 9(2) of the Act and Rule 9(4) of the 2001...

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SIGNIFICANT CASE LAWS

The Form-Over-Substance Fallacy: Pro-Arbitration Threshold Under Section 8

In *Akankha Nirman Private Limited & Anr. v. M/s. Supreme Construction & Ors.* Justice Hiranmay Bhattacharyya of the Calcutta High Court set aside the orders of the courts below that had refused arbitral reference, holding that a Section 8 application under the Arbitration and Conciliation Act, 1996, cannot be defeated merely for want of the original arbitration agreement or its certified copy, provided the applicant files a copy alongside a prayer directing the opposite party to produce the original censuring the courts below for adopting a "hyper-technical" approach and conducting a "mini trial" at the referral stage, and affirming that arbitrability is a question primarily for the Arbitral Tribunal under the competence-competence principle, such that reference must be refused only where the dispute is "dead wood" or manifestly non-arbitrable, and wherever contentions are "plainly arguable," the singular and irreducible judicial response must be to refer the parties to arbitration.



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SIGNIFICANT CASE LAWS

Concurrent Jurisdictions: The Complementary Coexistence of SARFAESI Enforcement and MSCS Arbitration

In *A. Navinchandra Steel Private Limited & Ors. v. Board of Directors of Abhyudaya Co-Op. Bank Ltd. & Ors.*, Justice Sharmila U. Deshmukh of the Bombay High Court dismissed Section 34 petitions challenging arbitral awards passed under Section 84 of the Multi-State Co-operative Societies Act, 2002, holding that a multi-state co-operative bank is not confined to approaching the Debt Recovery Tribunal under the Recovery of Debts and Bankruptcy Act, 1993, and that the arbitration mechanism under Section 84 of the MSCS Act is neither ousted nor excluded by the parallel invocation of SARFAESI enforcement proceedings, drawing support from *M.D. Frozen Foods Exports Pvt. Ltd. v. Hero Fincorp Ltd.* for the proposition that SARFAESI and arbitration proceedings can operate simultaneously without one barring the other, and expressly holding that Section 37 of the SARFAESI Act itself preserves the application of other laws, thereby affirming that a creditor's right to enforce a security interest under SARFAESI and its statutory right to arbitral adjudication under the MSCS Act are distinct, non-competing remedies ensuring that the summary character of security enforcement does not foreclose the adjudicatory process that a debtor is entitled to under the specialized cooperative legislation.



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SIGNIFICANT CASE LAWS

Succession of Arbitral Obligations: The Bound Status of Non-Signatory Housing Societies

Shree Dev Shasan Jain Shwetambar Murtipujak Trust v. Veer Tower Cooperative Housing Society Ltd., Justice Somasekhar Sundaresan of the Bombay High Court allowed two Section 11 applications filed by the Developer and the Temple Trust, holding that the Cooperative Housing Society, despite not being a literal signatory to the individual flat purchase agreements, constituted a "veritable party" to the arbitration clauses therein since its very formation was contemplated by and was a direct product of those agreements relying on Cox and Kings Ltd. v. SAP India (P) Ltd. for the proposition that the Section 11 court must conduct only a prima facie examination of a non-signatory's status while further holding that the Temple Trust, as recipient of gifted land through the Developer, qualified as a party claiming "through or under" a signatory, and firmly declining to pre-judge arbitrability at the referral stage, leaving all substantive jurisdictional challenges to the Arbitral Tribunal under the competence-competence principle, thereby establishing that the technical evolution from individual flat purchasers to a formally constituted cooperative society does not extinguish the pre-existing arbitral obligations from which that society was itself born.



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SIGNIFICANT CASE LAWS

Fraud Vitiates All: Conciliation Award Status, Triable Issues, and the Limits of Threshold Dismissal in Family Partition Disputes

In *J. Muthurajan & Anr. v. S. Vaikundarajan & Ors.*, a Division Bench of Justice Sanjay Kumar and Justice K. Vinod Chandran set aside the orders of the Madras High Court and the Trial Court that had rejected the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908, in a bitter family dispute over a vast business empire where the Vaikundarajan group sought to enforce a partition deed the Kaithadi Baga Pirivinai Pathiram alongside a Conciliation Award dated January 2, 2019, purportedly drawn up by a half-brother as conciliator under Part III of the Arbitration and Conciliation Act, 1996, while the Jegatheesan group alleged that both documents were executed under coercion, undue influence, and misrepresentation, and that the Conciliation Award was fabricated to give the partition deed the veneer of a statutory award holding that these allegations disclosed a prima facie cause of action constituting triable issues that could not be dismissed at the threshold, terming the rejection of the plaint "egregiously erroneous in law," and making the significant additional pronouncement that any conciliation conducted under Part III of the Act automatically attains the status and effect of an award under Section 61 unless the parties have expressly agreed to exclude its application while restoring the suit and directing that it be tried alongside the pending Section 47 objections, and leaving open the possibility of fresh arbitration by mutual consent, thereby reinforcing that the power under Order VII Rule 11 must be exercised only where a suit is manifestly meritless and not as a vehicle for pre-trial adjudication of substantive disputes regarding the authenticity and validity of family settlements.



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SIGNIFICANT CASE LAWS

Contempt Without Reference: Why Section 27(5) Must Precede the High Court's Contempt Jurisdiction Over Arbitral Orders

Renaissance Buildcon Company Pvt. Ltd. & Ors. v. Tarjinder Kumar Bansal & Ors., Justice Saurabh Banerjee of the Delhi High Court dismissed as not maintainable a petition filed under Section 10 of the Contempt of Courts Act, 1971, which sought initiation of contempt proceedings for alleged violation of interim orders passed by the Sole Arbitrator holding that a direct contempt petition before the High Court for non-compliance of an Arbitral Tribunal's interim orders is impermissible, since the exclusive and mandatory procedural gateway under Section 27(5) of the Arbitration and Conciliation Act, 1996, requires that the Arbitral Tribunal itself must first be satisfied that a contemptuous act has occurred and thereafter make a reference to the Court before any contempt proceedings can be initiated drawing upon the coordinate bench precedents in Sri Krishan v. Anand and Vivekananda College Thr. Principal v. Sanjay Kumar Chandlok to hold that the remedy for non-compliance with a Section 17 interim order lies exclusively through the Section 27(5) reference mechanism, and that bypassing this statutory route in favour of direct High Court litigation constitutes a fundamental procedural irregularity thereby reinforcing the principle of minimal judicial interference and preserving the Arbitral Tribunal's primacy as the first and indispensable authority for maintaining the integrity of its own proceedings.



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SIGNIFICANT CASE LAWS

Procedural Derogability and Award Finality: Why an ICA Appointment Defect Cannot Unravel a Concluded Award

In *Hala Kamel Zabal v. Arya Trading Ltd. & Ors.*, affirmed by the Division Bench, Justice C. Hari Shankar of the Delhi High Court dismissed Section 34 petitions challenging an arbitral award on the ground that the arbitrator in an International Commercial Arbitration had been appointed by the Chief Justice of the Delhi High Court rather than by the Supreme Court as mandated under Section 11(6) of the Act holding that while the appointment technically deviated from Section 11(6), it was in complete consonance with the parties' own arbitration clause which expressly designated the Chief Justice of the Delhi High Court as the appointing authority, and that under Section 34(2)(a)(v), an award is impeachable only where the tribunal's composition conflicts with both the parties' agreement and a non-derogable provision of the Act drawing from *Narayan Prasad Lohia v. Nikunj Kumar Lohia* to hold that Section 11(6) is a derogable, procedural provision whose strict compliance may be waived by contractual agreement or conduct, and that such a procedural defect cannot expand the grounds of challenge to an ICA award by importing the patent illegality standard reserved exclusively for domestic arbitrations firmly establishing that party autonomy in designating an appointing authority prevails over a technical statutory prescription, and that the finality of a concluded award cannot be displaced by a belated objection to a derogable procedural irregularity.



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SIGNIFICANT CASE LAWS

Substance Over Form: The Division Bench's Test of Intelligible Reasoning in Arbitral Awards

In *Jones Lang Lasalle Building Operations Pvt. Ltd. v. Techpark Maintenance Services Pvt. Ltd.*, state the principle that judicial interference with an arbitral award is impermissible solely on the ground of the "adequacy" or length of reasons provided by the arbitrator. A Division Bench of Justice Anil Kshetarpal and Justice Amit Mahajan of the Delhi High Court, sitting in a Section 37 appeal, set aside the order of the learned District Judge who had annulled the award under Section 34 for being "non-speaking," clarifying that Section 31(3) of the Arbitration and Conciliation Act, 1996 is satisfied as long as the award discloses a rational nexus between the material on record and the conclusions reached, without requiring prolix or elaborate judicial-style reasoning. Drawing from the Supreme Court's three-category framework in *OPG Power Generation Pvt. Ltd. v. Enxio Power Cooling Solutions India Pvt. Ltd.* (2025) 2 SCC 417 and *Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd.* (2019) 20 SCC 1, the Division Bench held that a Section 34 court commits a jurisdictional error when it supplants the arbitrator's reasoning while simultaneously conceding that the award is founded on evidence, emphasising that adequacy of reasons is a matter of substance over length, and that awards must not be set aside in a casual and cavalier manner merely because the reasoning is brief or not articulated with judicial nicety.



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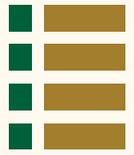
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