$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on:08.01.2026
Judgment pronounced on: 28.01.2026

\+ EX.P. 386/2015, EX.APPL.(OS) 233/2017 (U/O XXI RULE 46), EX.APPL.(OS) 337/2017 (U/O XXI Rule 58), EX.APPL. (OS) 339/2017 (U/O XXI Rule 46A), EX.APPL.(OS) 423/2018 (U/O 21 Rule 64 & Rule 72), EX.APPL.(OS) 1522/2025 (U/O XXI Rule 58) & EX.APPL.(OS) 1794/2025 (Delay of 4 Days in filing the rejoinder)

AVNEET SONI .....Decree Holder

Through: Mr. Pawanjit Singh Bindra, Senior Advocate with Mr. Kirtiman Singh, Mr. Madhu Sudan, Mr. Vikhyat Oberoi, Mr. Ankit Kakkar, Mr. Ravi Sharma, Mr. Nishita Gupta, Mr. Shivam Prakash, Ms. Shreya V. Mehra, Mr. Fazal Haroon, Ms. Deepti Mehra and Mr. Maulik, Advocates.

versus

KAVITA AGARWAL .....Judgement Debtor

Through: Mr. Arvind Nigam, Senior Advocate with Mr. Raghuveer Kapur and Mr. Sagar Aggarwal, Advocates.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

Prologue:

1. The present Execution Petition, being EX.P. 386/2015, has been filed by the Decree Holder under Section 36 of the **Arbitration and Conciliation Act, 1996**[1], read with Order XXI and Sections 94 and 151 of the **Code of Civil Procedure, 1908**[2] seeking enforcement of the Arbitral Award dated 31.12.2014, passed by the learned Sole Arbitrator, Justice K.S. Gupta (Retd.).

2. By the said Award, the Decree Holder was granted a sum of Rs. 4.80 Cr., along with interest thereon at the rate of 6% per annum from 01.02.2013 until realisation. In addition thereto, the Judgment Debtor was directed to pay an amount of Rs. 1,92,000/- towards arbitration fees and miscellaneous expenses, as well as Rs. 35,000/- towards the Decree Holder's legal fees.

3. In the course of the execution proceedings, the Judgment Debtor has filed an **application, being EX.APPL.(OS) 1522/2025, under Section 47 read with Order XXI Rule 58 and Section 151 of the CPC**[3], seeking dismissal of the Execution Petition. By way of the said application, the Judgment Debtor prays for a declaration that the Arbitral Award dated 31.12.2014 is null and void, *non est* in law, and incapable of execution.

4. This Court has heard learned senior counsel for the parties at length on the aforesaid Objection Application. Pursuant thereto, the present judgment is being rendered, which shall conclusively determine the maintainability of the Execution Petition. It is evident

[1] The A&C Act
[2] CPC
[3] Objection Application

that in the event the Objection Application succeeds, the Execution Petition would necessarily fail.

EX.APPL.(OS) 1794/2025 (Condonation of Delay of 4 Days in Filing the Rejoinder)

5. Before proceeding to adjudicate the objections raised to the Execution Petition, it is necessary to consider EX.APPL.(OS) 1794/2025, whereby the Judgment Debtor seeks condonation of a delay of four days in filing the rejoinder to the reply filed in the Objection Application.

6. Having regard to the grounds stated in the application and considering that the delay is minimal in nature, this Court is satisfied that sufficient cause has been shown. Accordingly, the delay of four days in filing the rejoinder is condoned, and EX.APPL.(OS) 1794/2025 is allowed and disposed of.

EX.APPL.(OS) 1522/2025 (Under Order XXI Rule 58 CPC)

7. The Court now proceeds to examine EX.APPL.(OS) 1522/2025, the Objection Application filed by the Judgment Debtor challenging the execution of the arbitral award, primarily on the ground that the learned Sole Arbitrator lacked jurisdiction to pass the Award and, consequently, that the decree arising therefrom is unsustainable in law.

8. For the sake of clarity and consistency in the present adjudication, the Judgment Debtor shall hereinafter be referred to as the "***Objector***", and the Decree Holder shall be referred to as the "***DH***".

Brief Facts:

9. Shorn of unnecessary details, the facts essential for the

adjudication of the present Objection Application are as follows:

(i) An Agreement to Sell dated 11.03.2008 was entered into between the Objector and one Mr. D.K. Jain, whereby Mr. D.K. Jain agreed to sell, and the Objector agreed to purchase, the **entire third floor along with terrace rights of property bearing No. K-15, Hauz Khas Enclave, New Delhi, admeasuring approximately 1150 sq. yards.**[4].

(ii) Pursuant thereto, a civil suit bearing CS(OS) No. 2439/2009, titled *'C.S. Agarwal and Ors. v. D.K. Jain'*, seeking specific performance of the said Agreement to Sell, came to be instituted before this Court.

(iii) During the pendency of the aforesaid suit, upon representations made by the Objector to the DH, the parties entered into a **Memorandum of Understanding dated 15.05.2010**[5], whereby the DH agreed to purchase the subject property for a total consideration of Rs. 5 Cr. Out of the said amount, a sum of Rs. 2.25 Cr. was paid to the Objector, and the balance amount of Rs. 2.75 Cr. was agreed to be paid at the time of execution of the sale deed.

(iv) The said MoU further stipulated that if CS (OS) No. 2439/2009 were not decided in favour of the Objector within a period of two years from the date of execution of the MoU, or if the suit were dismissed at any stage, the Objector would be liable to refund a sum of Rs. 4.50 Cr., being double the amount paid as earnest money. The MoU also contained an arbitration clause.

[4] Subject Property
[5] MoU

(v) As the aforesaid civil suit was not decided within the stipulated period, in terms of the MoU, the Objector, on 16.05.2012, issued a post-dated cheque for a sum of Rs. 4.50 Cr. towards discharge of her liability. Upon presentation on 11.08.2012, the said cheque was returned unpaid with the remark "*Account Closed*", which led to the issuance of a legal notice dated 12.09.2012 and initiation of proceedings under Section 138 of the **Negotiable Instruments Act, 1881**[6].

(vi) Thereafter, the Objector sought an extension of time to fulfil her obligations. Consequently, the parties entered into a subsequent Agreement dated 26.10.2012, whereby the time for payment was extended till 31.01.2013, subject to payment of an additional amount of Rs. 30 lakhs as compensation for the delay. The said Agreement also contained an arbitration clause, entitling the DH to appoint an arbitrator for the adjudication of disputes, if any. However, the three cheques issued pursuant to the said Agreement were again dishonoured, resulting in the initiation of fresh proceedings under Section 138 of the NI Act.

(vii) In these circumstances, the DH invoked the arbitration clause contained in Clause 5 of the Agreement dated 26.10.2012 and appointed Justice K.S. Gupta (Retd.) as the Sole Arbitrator.

(viii) The Objector filed an application under Section 16 of the A&C Act, challenging the jurisdiction of the learned Arbitrator on the ground of unilateral appointment. The said application was dismissed by order dated 07.08.2014.

[6] NI Act

Thereafter, the Objector declined to participate in the arbitral proceedings and was proceeded *ex parte* by order dated 29.08.2014.

(ix) On 31.12.2014, the learned Arbitrator passed the Award in favour of the DH, holding that the DH was entitled to recover a sum of Rs. 4.80 Cr. along with interest at the rate of 6% per annum from 01.02.2013 till realisation. The Award further granted Rs. 1,92,000/- towards arbitration fees and miscellaneous expenses and Rs. 35,000/- towards legal fees.

(x) Aggrieved by the said Award, the Objector filed a Petition under Section 34 of the A&C Act, being O.M.P. No. 273/2015, primarily on the ground of unilateral appointment of the Arbitrator. The said petition was dismissed by this Court *vide* order dated 27.04.2015.

(xi) An appeal filed thereafter under Section 37 of the A&C Act, being FAO(OS) No. 406/2015, was also dismissed by order dated 29.07.2015. The Objector further approached the Hon'ble Supreme Court by way of SLP(C) No. 3058/2016, which came to be dismissed by order dated 25.07.2016.

(xii) Subsequent to the dismissal of the appeal under Section 37 of the A&C Act, the DH filed the present Execution Petition, being EX.P. 386/2015, on 25.08.2015, seeking enforcement of the arbitral award, which remains pending.

(xiii) In the Execution Petition, the Objector filed an objection application, being EX.APPL.(OS) 576/2019 challenging the executability of the Award on the ground, *inter alia*, that the Award was *non est* in law.

(xiv) The said objection application was, however, withdrawn by

the Objector without seeking any liberty to file afresh, which was permitted by this Court *vide* order dated 07.11.2019.

(xv) Thereafter, on 24.10.2025, the Objector has filed the present Objection Application, being EX.APPL.(OS) 1522/2025, seeking dismissal of the Execution Petition.

(xvi) Upon completion of pleadings, the present Objection Application is now taken up for final adjudication.

Contentions of the Objector:

10. Learned senior counsel for the Objector would submit that the present objections raised at the stage of execution are fully maintainable in law, as it is now well settled that an objection to the executability of an arbitral award can be raised under Section 36 of the A&C Act, particularly where the award is alleged to be a nullity. It would further be submitted that an award rendered by an illegally constituted arbitral tribunal, especially one lacking inherent jurisdiction on account of unilateral appointment of an Arbitrator, would be *void ab initio*, *non est* in law, and incapable of execution as a decree, since such jurisdictional defects strike at the very root of the tribunal's authority and are non-waivable in nature.

11. Learned senior counsel for the Objector would further submit, placing reliance on the decision of the Division Bench of this Court in ***Mahavir Prasad Gupta & Sons v. State (NCT of Delhi)***[7], that participation in arbitral proceedings does not amount to waiver of the right to object to unilateral appointment and that an award rendered by a unilaterally constituted tribunal is a nullity which can be challenged even at the execution stage. Similar principles, it would further be

[7] 2025 SCC OnLine Del 4241

submitted by the learned senior counsel, have been reiterated by the Hon'ble Supreme Court in ***Bhadra International (India) (P) Ltd. v. Airports Authority of India***[8], wherein it has been held that waiver must be express and in writing and that an award passed by an ineligible arbitrator is unenforceable and open to challenge at any stage, including execution.

12. Learned senior counsel for the Objector would submit that execution proceedings are separate, distinct, and independent proceedings and do not constitute a continuation of arbitral proceedings or post-award challenges under Sections 34 or 37 of the A&C Act, and that the Executing Court would therefore be fully competent to examine whether the decree sought to be enforced suffers from inherent lack of jurisdiction and is consequently inexecutable. Further, findings rendered in earlier proceedings, it would be urged by the learned senior counsel, cannot bind the Executing Court where the issue goes to the very nullity of the decree itself. In this context, reliance would be placed on ***Karnataka Housing Board v. K.A. Nagamani***[9].

13. Learned senior counsel for the Objector would further contend that a decree or award passed by a forum lacking inherent jurisdiction is *coram non judice* and has no legal existence in the eyes of law, and that such a jurisdictional defect renders the decree void irrespective of earlier affirmations or passage of time, since jurisdiction cannot be conferred by consent, waiver, acquiescence, or participation. In support, reliance would be placed by the learned senior counsel, on

[8] 2026 SCC OnLine SC 7
[9] (2019) 6 SCC 424

Kanwar Singh Saini v. High Court of Delhi[10], wherein the Hon'ble Supreme Court has held that an order passed without jurisdiction is a nullity and can be challenged at any stage, including execution, as well as on ***Sushil Kumar Mehta v. Gobind Ram Bohra***[11], wherein it was has been that the doctrine of *res judicata* does not apply to a null decree and that an erroneous assumption of jurisdiction cannot attain finality.

14. Learned senior counsel for the Objector would submit that the objections raised by the DH in reply, particularly on the ground of *res judicata*, are wholly misconceived and frivolous, as *res judicata* is procedural in nature and cannot operate to validate an order or decree passed without jurisdiction. It would also be submitted that a*void* order cannot be sanctified by procedural doctrines such as *estoppel*, waiver, acquiescence, or *res judicata*, as clearly enunciated in ***Sushil Kumar Mehta*** (*supra*).

15. It would further be submitted by the learned senior counsel that in ***Mathura Prasad Bajoo Jaiswal v. Dossibai N.B. Jeejeebhoy***[12], the Hon'ble Supreme Court has held that *res judicata* does not apply where the legal position has subsequently been clarified or altered, and that in the present case, the law relating to unilateral appointment and the stage at which such objections may be raised has since been conclusively settled.

16. Learned senior counsel for the Objector would submit that the plea of constructive *res judicata* raised by the DH is equally untenable, as the earlier objection application filed by the objector

[10] (2012) 4 SCC 307
[11] (1990) 1 SCC 193
[12] (1970) 1 SCC 613

under Section 47 of the CPC was dismissed as withdrawn without any adjudication on merits. It would further be submitted that an order dismissing an application as withdrawn would not amount to a decree or a final determination of rights and therefore cannot attract the doctrine of constructive *res judicata*. Reliance in this regard would be placed on ***Ashoka Marketing Ltd. v. B.D. Gupta***[13], as well as ***Jai Prakash v. Khimraj***[14].

17. Learned senior counsel for the Objector would further submit that the doctrine of issue *estoppel* has no application where the underlying order or decree is itself a nullity, since an order passed without jurisdiction cannot be cured or validated by *estoppel* arising from prior findings or conduct of the parties. In this regard, reliance would be placed on ***Ashok Leyland Ltd. v. State of Tamil Nadu***[15], wherein the Hon'ble Supreme Court has held that *res judicata* and allied doctrines are procedural in nature and cannot be invoked to protect a *void* order.

18. Learned senior counsel for the Objector would submit that the contention of the DH that unilateral appointments made prior to the **Arbitration and Conciliation (Amendment) Act, 2015**[16], are immune from challenge is legally unsustainable, as unilateral appointment of a Sole Arbitrator violates the fundamental principles of neutrality, equality of parties, and procedural fairness enshrined in Section 18 of the A&C Act. Such invalidity flows not merely from statutory amendment but from foundational jurisdictional principles, and the 2015 Amendment Act merely clarified and codified these

[13] 1975 SCC OnLine Del 41
[14] 1990 SCC OnLine Raj 36
[15] (2004) 3 SCC 1
[16] 2015 Amendment Act

principles without creating any new illegality.

19. Learned senior counsel for the Objector would further submit, placing reliance on ***Vineet Dujodwala v. Phoenix ARC Pvt. Ltd.***[17], that unilateral appointment of an arbitrator is impermissible in law even prior to the 2015 Amendment Act, and would also rely on ***M/s Mahavir Prasad Gupta & Sons*** (*supra*) to contend that an award passed by a unilaterally appointed arbitrator is a nullity and that objections thereto can be raised at the execution stage; even the judgment in ***Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML***[18], relied upon by the DH, recognises neutrality and equality of parties as mandatory jurisdictional requirements.

20. Learned senior counsel for the Objector would accordingly submit that, in view of the aforesaid settled legal position and binding precedents, the arbitral award dated 31.12.2014 passed by the learned Arbitrator is *non est* in law and incapable of execution, and that the present Execution Petition, therefore, deserves to be dismissed.

Contentions of the DH:

21. ***Per contra***, learned senior counsel for the DH would submit that the present application filed by the Objector is wholly misconceived and constitutes a gross abuse of the process of law, inasmuch as the Objector had earlier filed objections in execution proceedings being E.A. (OS) No. 576/2019, wherein the very same objection relating to unilateral appointment of the arbitrator was raised, and the said application was unconditionally withdrawn and

[17] 2024 SCC OnLine Del 5940
[18] (2025) 4 SCC 641

dismissed by this Court *vide* order dated 07.11.2019, without any liberty being reserved. It would then be submitted that having consciously abandoned the objection at that stage, the Objector would be estopped from reagitating the same issue after a lapse of several years, and the present application would amount to nothing but an impermissible attempt to take a second bite at the cherry, warranting dismissal on this ground alone.

22. Without prejudice to the aforesaid, learned senior counsel for DH would further submit that the present objection Application is squarely barred by the principle of *res judicata*, as the issue of unilateral appointment of the arbitrator has been raised, considered, and finally adjudicated at every conceivable stage of the arbitral and post-arbitral proceedings.

23. It would then be submitted by the learned senior counsel for the DH that the objection was first raised before the learned Arbitrator under Section 16 of the A&C Act, and was rejected *vide* order dated 07.08.2014; thereafter, the same objection was raised in the petition under Section 34, which was dismissed by a reasoned order dated 27.04.2015; the Objector thereafter carried the issue in appeal under Section 37, which too was dismissed *vide* order dated 29.07.2015; and finally, the Objector approached the Hon'ble Supreme Court by way of an SLP, which was dismissed on 25.07.2016, and therefore, in view of these successive adjudications, the issue would stand finally concluded and would not be open to reopening at the stage of execution.

24. Learned senior counsel for DH would further submit that the doctrine of *res judicata*, as embodied under Section 11 of the CPC, would apply with full force to execution proceedings by virtue of

Explanation VII thereto, and that the Hon'ble Supreme Court has consistently held that objections which have been raised and rejected in earlier proceedings would not be permitted to be reagitated during execution. In this regard, reliance would be placed on ***P.V. Jose v. Kanickammal***[19],and ***Victoria v. K.V. Naik***[20], wherein it has been categorically held that execution proceedings would not serve as a forum for reopening settled issues.

25. Learned senior counsel for DH would further submit that, in the present case, the bar of *res judicata* would operate with even greater force, since the Objector had raised similar objections during execution proceedings as well and thereafter chose to withdraw them without liberty. It would then be submitted that the Hon'ble Supreme Court in ***Barkat Ali v. Badrinarain***[21], has held that orders passed at different stages of execution would attain finality and would operate as *res judicata* at subsequent stages, and after withdrawal of the earlier objections in 2019, several substantive orders would have been passed in execution, including confirmation of attachment by the Division Bench, thereby foreclosing any attempt by the Objector to roll back the proceedings to an earlier stage.

26. Learned senior counsel for DH would also submit that the arbitral award in the present case would be governed by the law as it stood prior to the 2015 Amendment Act, which came into force on 23.10.2015, and that Section 26 thereof would clearly stipulate that the amendments would not apply to arbitral proceedings which had already commenced. It would further be submitted that this legal

[19] (2000) 9 SCC 350
[20] (1997) 6 SCC 23
[21] (2008) 4 SCC 615

position would stand conclusively settled by the Hon'ble Supreme Court in ***BCCI v. Kochi Cricket (P) Ltd.***[22], and since the arbitral award in the present case was passed on 31.12.2014, much prior to the amendment, the pre-2015 legal regime would squarely apply.

27. Learned senior counsel for DH would further submit that under the pre-2015 legal framework, unilateral appointment of an arbitrator would be legally permissible, provided the same was authorised by the arbitration agreement, and the courts would be bound to give primacy to the contractual mechanism for appointment. The Hon'ble Supreme Court in ***Union of India v. Parmar Construction Co.***[23], has held that where arbitration was invoked prior to the 2015 Amendment, the appointment procedure agreed between the parties would have to be honoured, and this position would stand reiterated in catena of judgements including ***S.P. Singla Constructions (P) Ltd. v. State of H.P.***[24], ***Union of India v. Pradeep Vinod Construction Co.***[25], and ***DD Global Capital (P) Ltd. v. SE Investments Ltd.***[26], wherein it has further been held that the judgments in ***TRF Ltd. v. Energo Engg. Projects Ltd.***[27], and ***Perkins Eastman Architects DPC v. HSCC (India) Ltd.***[28], would have no retrospective application to arbitrations invoked prior to the amendment.

28. Learned senior counsel for DH would further submit that it is also well settled that an arbitral award which was validly rendered in accordance with the law prevailing at the relevant time would not be liable to be declared illegal on the basis of subsequent judicial

[22] (2018) 6 SCC 287
[23] (2019) 15 SCC 682
[24] (2019) 2 SCC 488
[25] (2020) 2 SCC 464
[26] 2023 SCC OnLine Del 5682
[27] (2017) 8 SCC 377
[28] (2020) 20 SCC 760

developments, and that the Allahabad High Court in ***Savitri Devi v. Union of India***[29], has held that subsequent changes in law or judicial interpretation would not retrospectively invalidate an award that was legal when rendered.

29. Learned senior counsel for DH would further submit that the reliance placed by the Objector on subsequent judgments such as ***Vineet Dujodwala*** (*supra*) would be wholly misplaced and founded on an incorrect reading thereof, inasmuch as the said judgment itself relies upon ***Dharma Prathishthanam v. Madhok Construction (P) Ltd.***[30], which recognises that unilateral appointment would be impermissible only where the arbitration clause does not permit such appointment. In the present case, the arbitration clause expressly allowed unilateral appointment, and in any event, ***Vineet Dujodwala*** *(supra)* would be clearly distinguishable on facts, since the arbitrator therein had repeated and extensive associations with one of the parties, whereas in the present case, the arbitrator was a retired Judge of this Court, a fact specifically noticed in the Section 34 judgment.

30. Learned senior counsel for DH would further submit that reliance on ***Mathura Prasad*** (*supra*) would be equally misconceived, as the said judgment applies only to pure questions of law arising from a subsequent change in legal position, whereas the issue of unilateral appointment in a given case would involve a mixed question of law and fact. The Hon'ble Supreme Court in ***Union of India v. Reliance Industries Ltd.***[31], has categorically held that the ratio of ***Mathura Prasad*** (*supra*) would not apply where jurisdictional objections

[29] 2024 SCC OnLine All 3343
[30] (2005) 9 SCC 686
[31] (2015) 10 SCC 213

involve mixed questions of law and fact.

31. Learned senior counsel for DH would also submit that the judgment in ***Bhadra International*** *(supra)* would be clearly distinguishable, as the arbitration therein was invoked after the 2015 Amendment Act, unlike the present case.

32. Lastly, learned senior counsel for DH would submit that the present Objection Application would be barred by the doctrine of *res judicata*, would run contrary to settled principles of arbitration law, and would constitute a clear abuse of the execution process.

Analysis:

33. This Court has heard the learned senior counsel appearing on behalf of both parties and, with their able assistance, has carefully examined the pleadings, the relevant records, and the post-hearing written submissions placed on record.

34. In the present case, the Objector does not dispute the factual position that a challenge to the appointment of the learned Arbitrator was raised before the learned Arbitrator himself under Section 16 of the A&C Act, and that the said challenge came to be rejected. Consequent upon the rejection of the said challenge, the Objector chose not to participate in the arbitral proceedings, which ultimately culminated in the passing of an *ex parte* Arbitral Award dated 31.12.2014.

35. It is further an admitted position that the very same objection relating to the unilateral appointment of the Arbitrator constituted the central and substantive ground of challenge in the proceedings initiated under Section 34 of the A&C Act. The said challenge was rejected by the learned Single Judge of this Court. Thereafter, the

same objection was reiterated in the appeal under Section 37 of the A&C Act, which too was dismissed by the Division Bench of this Court, and subsequently carried before the Hon'ble Supreme Court by way of a Special Leave Petition, which also came to be dismissed.

36. Thus, the Objector does not dispute that at every prior stage of challenge, the principal and foundational objection urged for setting aside the Arbitral Award was premised on the allegation of unilateral appointment of the learned Arbitrator.

37. Notwithstanding the aforesaid admitted factual and procedural history, the Objector now contends that the present Objection Application is nonetheless maintainable on the premise that the unilateral appointment of the Arbitrator strikes at the very root of the matter and renders the arbitral proceedings *coram non judice*. It is argued that once the proceedings are *coram non judice,* the resultant Arbitral Award is a nullity in the eyes of law and, consequently, the Execution Petition itself would be non-maintainable.

38. On this basis, the Objector seeks to contend that the prior adjudication of the very same issue in proceedings under Sections 34 and 37 of the A&C Act, as well as before the Hon'ble Supreme Court, does not preclude reconsideration of the issue at the stage of execution, and that such reconsideration would not be barred by the principles of *res judicata*.

39. According to the Objector, the present case falls within the recognised exceptions to the doctrine of *res judicata* on two grounds, *first*, that the objection pertains to an issue of inherent jurisdiction which goes to the root of the controversy and, therefore, can be raised at any stage, including at the stage of execution; and *second*, that the principle of *res judicata* would not apply where there has been a

subsequent change or crystallisation of the law, it being asserted that the legal position governing unilateral appointment of a sole arbitrator has since undergone a material change and now stands settled.

40. There can be no dispute with the broad and well-settled propositions of law that issues pertaining to an inherent lack of jurisdiction, being matters that go to the very root of the authority or competence of a court or tribunal to pass an award or decree, may, in appropriate cases, be raised at any stage of the proceedings, including even at the stage of execution.

41. It is equally well settled that the doctrine of *res judicata*, though founded on principles of finality, certainty, and judicial discipline, is not an inflexible or absolute rule and admits of certain narrowly tailored exceptions that have been judicially recognised over time. These principles, however, cannot be understood or applied as abstract maxims divorced from the factual and procedural realities of a given case.

42. In the considered view of this Court, the applicability of objections relating to jurisdiction, as well as the invocation of exceptions to the doctrine of *res judicata*, must necessarily be assessed in the context of the specific factual matrix, the nature of the jurisdictional challenge raised, and the procedural history leading up to the stage at which such objections are sought to be urged. The mere assertion that a plea relates to jurisdiction does not, by itself, confer an unfettered right to raise the same at any stage, irrespective of prior conduct, waiver, acquiescence, or adjudication. Likewise, the recognised exceptions to *res judicata* cannot be employed as a blanket device to reopen issues that have already been conclusively

determined between the parties, particularly where such issues were raised, or could and ought to have been raised, in earlier proceedings.

43. The Courts must therefore undertake a careful and nuanced examination of whether the alleged lack of jurisdiction is truly inherent and fundamental, or whether it pertains to a procedural irregularity or a curable defect that does not vitiate the proceedings *ab initio*. Further, the Courts must consider whether the party raising such objections had earlier opportunities to agitate the same, whether such objections were in fact raised and adjudicated upon, and whether permitting their re-agitation at a belated stage would undermine the principles of finality and judicial economy.

44. Accordingly, neither the permissibility of raising jurisdictional objections at the execution stage nor the relaxation of the doctrine of *res judicata* can be applied mechanically or as a matter of course. Each case must be evaluated on its own merits, with due regard to its factual backdrop, procedural trajectory, and the overarching need to balance the rectification of jurisdictional errors against the equally important principle that litigation must, at some point, attain finality.

45. In the present case, the Objector does not dispute that the issue concerning the unilateral appointment of the Arbitrator was consistently raised and pursued up to the Hon'ble Supreme Court. Notwithstanding the same, at the stage of execution, the Objector now seeks to reagitate the very contention which had already been raised and conclusively adjudicated, by asserting that execution proceedings are not a continuation of the original proceedings but constitute independent proceedings. To this legal position, this Court expresses its concurrence.

46. However, even considering execution proceedings to be independent in nature, the same does not advance the case of the Objector in any manner. It is a settled position of law that the doctrine of *res judicata*, as embodied in Section 11 of the CPC, applies with equal rigour to execution proceedings in relation to the original proceedings. Consequently, any issue which was directly and substantially in issue between the same parties and has already been adjudicated upon by a court of competent jurisdiction cannot be permitted to be reopened at the stage of execution. For the sake of ready reference, Section 11 of the CPC is reproduced hereinbelow:

> "**11. Res judicata. -** No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court."

47. In the considered view of this Court, an objection which has been raised, examined, and finally rejected in the original proceedings by a court of competent jurisdiction cannot be permitted to be reagitated at the stage of execution. When the expressions "*suit*", "*issue*", and "*former suit*" occurring in Section 11 of the CPC, are construed, in the context of execution, as referring respectively to proceedings for execution of the decree or arbitral award, the questions arising therein, and the original proceedings in which such decree or award was passed, the statutory bar of *res judicata* is clearly attracted and squarely applies.

48. Where the issue of jurisdiction has already been raised by the concerned party at an earlier stage, has been duly considered by the competent court or tribunal, and has been conclusively adjudicated

upon between the parties. In such circumstances, the doctrine of *res judicata* squarely comes into operation and bars the re-agitation of the same issue, even if it is sought to be recast as a jurisdictional objection. The law does not permit a party to repeatedly challenge the same issue under different procedural guises once it has attained finality.

49. The doctrine of *res judicata* is founded on the salutary principles of finality of litigation, certainty in legal relations, and the conclusiveness of judicial determinations. It seeks to prevent endless litigation, avoid inconsistent decisions, and protect the sanctity of judicial verdicts. Allowing a party to reopen an issue of jurisdiction that has already been finally decided would not only undermine these principles but would also erode the authority of judicial pronouncements and disrupt the orderly administration of justice. The aforesaid principle has been consistently recognised and affirmed by the Hon'ble Supreme Court in a catena of judgments, including ***P.V. Jose*** (*supra*) and ***K.V. Naik*** (*supra*).

50. In ***P.V. Jose*** (*supra*), the Hon'ble Supreme Court has categorically held that once a contention has been raised and adjudicated upon in earlier proceedings, and the aggrieved party has either exhausted its remedies or chosen not to pursue them further, the same contention cannot be permitted to be raised again to obstruct or oppose execution. The relevant extracts from ***P.V. Jose*** (*supra*) are reproduced hereinbelow:

> "**2.** The trial court decreed the suit and granted a decree for declaration and possession in favour of the respondent herein. Thereupon the stepbrother of the respondent filed an appeal in the Court of the District Judge, Coimbatore who by his judgment dated 31-10-1975 in Appeal Suit No. 21 of 1974 upheld the decree of the trial court. While disposing of the said appeal one of the

contentions which was considered by the lower appellate court was the plea which had been raised by the appellant herein to the effect that he was entitled to the benefit under the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (for short "the Act"). This contention of the appellant herein was not accepted. It was observed that the appellant herein had denied the title of the landlady with a mala fide intention of defeating her claim and, therefore, she was entitled to the relief of recovery of possession and mesne profits against the appellant herein. Second appeal filed against the said decision was dismissed by the High Court.

3. The second round of litigation started with the filing of execution application by the respondent. Paper delivery was granted but then in 1985 another execution application was filed under Order 21 Rule 35 claiming possession of the property from the appellant herein. By order dated 21-8-1986 the executing court accepted the contention of the appellant that he was a tenant. Against the rejection of the execution application, the respondent preferred Civil Revision No. 3751 of 1985 before the High Court and by judgment dated 31-7-1988. The said application was allowed as the High Court came to the conclusion that the provisions of the Rent Act were not applicable to the appellant herein. It is against the said judgment that the present appeal by special leave has been filed.

4. We, after hearing learned counsel for the parties, are in agreement with the aforesaid decision of the High Court. The High Court on an earlier occasion, while hearing second appeal against the judgment of the lower appellate court, had upheld the finding that the appellant herein was not entitled to the protection of the Act. Once this contention had been raised and considered and the appellant having not carried the matter any further, the High Court, in our opinion, was right in invoking the principle of res judicata and holding that the appellant cannot oppose the execution by raising a contention that he is entitled to the protection of the Act.

5. Mr Ram Kumar, learned counsel appearing for the appellant sought to place reliance on Section 10 of the Act but that provision can be of no application in the present case in view of the concurrent finding of the courts below to the effect that the provisions of the Act, as a whole, were not applicable in the present case inasmuch as the appellant himself had denied that he was a tenant of the respondent. Be that as it may, without expressing any final opinion on this aspect, on the ground of res judicata itself this appeal has to be dismissed. Ordered accordingly. However, there will be no order as to costs."

(emphasis supplied)

51. The Court now turns to the next contention advanced by the Objector, *namely*, that even if the principle of *res judicata* were

otherwise applicable, the present case would fall within the recognised exceptions to the said doctrine. In this context, it is contended that the legal position governing unilateral appointment of a sole arbitrator has since undergone a material change and now stands conclusively settled, thereby justifying a fresh examination of the issue notwithstanding its earlier adjudication.

52. As noticed hereinbefore, the doctrine of *res judicata* is not rigid or inflexible, and judicially recognised exceptions do exist. However, instead of first examining whether the present case falls within any such exception, this Court considers it appropriate to directly examine the foundational submission of the Objector, *namely*, whether there has in fact been any subsequent change or crystallisation of law governing unilateral appointment of a sole arbitrator that would have a bearing on the present proceedings.

53. At the outset, it is undisputed that the appointment of the learned Arbitrator, in terms of the agreement between the parties, as well as the commencement of the arbitral proceedings in the present case, took place prior to the enforcement of the 2015 Amendment Act. It is also an admitted position that the arbitral award was rendered by the learned Arbitrator on 31.12.2014, which is clearly anterior to the coming into force of the 2015 Amendment Act on 23.10.2015.

54. The 2015 Amendment Act itself, in Section 26, expressly stipulates the temporal applicability of the amended provisions. Section 26 categorically provides that the amendments introduced by the 2015 Amendment Act shall not apply to arbitral proceedings commenced in accordance with Section 21 of the principal Act prior to the date of commencement of the 2015 Amendment Act, unless the parties otherwise agree, while making the amended provisions

applicable only to arbitral proceedings commenced on or after 23.10.2015. Section 26 of the 2015 Amendment Act reads as under:

> "**26. Act not to apply to pending arbitral proceedings** -Nothing contained in this Act shall apply to the arbitral proceedings commenced, in accordance with the provisions of section 21 of the principal Act, before the commencement of this Act unless the parties otherwise agree but this Act shall apply in relation to arbitral proceedings commenced on or after the date of commencement of this Act."

55. Consequently, the legality or otherwise of the unilateral appointment of a sole arbitrator in the present case must necessarily be examined in the context of the law as it stood on the date of commencement of the arbitral proceedings, having due regard to Section 21 of the A&C Act and the express mandate of Section 26 of the 2015 Amendment Act.

56. The scope, effect, and consequences of Section 26 of the 2015 Amendment Act have been the subjectmatter of consideration before the Hon'ble Supreme Court in numerous decisions. The consistent position that has emerged is that arbitral proceedings commenced prior to 23.10.2015 are not affected by the substantive amendments introduced by the 2015 Amendment Act, including those relating to unilateral appointment of arbitrators.

57. It is noteworthy that Section 26 of the 2015 Amendment Act was sought to be retrospectively deleted by Section 15 of the **Arbitration and Conciliation (Amendment) Act, 2019**[32]. However, a three-Judge Bench of the Hon'ble Supreme Court in ***Hindustan Construction Co. Ltd. v. Union of India***[33], while examining the constitutional validity of the 2019 Amendment Act, declared the

[32] 2019 Amendment Act
[33] (2020) 17 SCC 324

deletion of Section 26 to be unconstitutional and manifestly arbitrary. In doing so, the Hon'ble Supreme Court reaffirmed and clarified the legal position emanating from Section 26 of the 2015 Amendment Act. The relevant extracts from the said judgment are reproduced hereinbelow:

> *"**Constitutional challenge to the 2019 Amendment Act***
> **59.** This now sets the stage for the examination of the constitutional validity of the introduction of Section 87 into the Arbitration Act, 1996, and deletion of Section 26 of the 2015 Amendment Act by the 2019 Amendment Act against Articles 14, 19(1)(*g*), 21 and Article 300-A of the Constitution of India. The Srikrishna Committee Report recommended the introduction of Section 87 owing to the fact that there were conflicting High Court judgments on the reach of the 2015 Amendment Act at the time when the Committee deliberated on this subject. This was stated as follows in the Srikrishna Committee Report:
>
> > "However, Section 26 has remained silent on the applicability of the 2015 Amendment Act to court proceedings, both pending and newly initiated in case of arbitrations commenced prior to 23-10-2015. Different High Courts in India have taken divergent views on the applicability of the 2015 Amendment Act to such court proceedings. Broadly, there are three sets of views as summarised below:
> >
> > (*a*) The 2015 Amendment Act is not applicable to court proceedings (fresh and pending) where the arbitral proceedings to which they relate commenced before 23-10-2015.
> >
> > (*b*) The first part of Section 26 is narrower than the second and only excludes arbitral proceedings commenced prior to 23-10-2015 from the application of the 2015 Amendment Act. The 2015 Amendment Act would, however, apply to fresh or pending court proceedings in relation to arbitral proceedings commenced prior to 23-10-2015.
> >
> > (*c*) The wording "arbitral proceedings" in Section 26 cannot be construed to include related court proceedings. Accordingly, the 2015 Amendment Act applied to all arbitrations commenced on or after 23-10-2015. As far as court proceedings are concerned, the 2015 Amendment Act would apply to all court proceedings from 23-10-2015, including fresh or pending court proceedings in relation to arbitration commenced before, on or after 23-10-2015.

> *Thus, it is evident that there is considerable confusion regarding the applicability of the 2015 Amendment Act to related court proceedings in arbitration commenced before 23-10-2015*. The Committee is of the view that a suitable legislative amendment is required to address this issue.
>
> The committee feels that permitting the 2015 Amendment Act to apply to pending court proceedings related to arbitrations commenced prior to 23-10-2015 would result in uncertainty and prejudice to parties, as they may have to be heard again. It may also not be advisable to make the 2015 Amendment Act applicable to fresh court proceedings in relation to such arbitrations, as it may result in an inconsistent position. Therefore, it is felt that it may be desirable to limit the applicability of the 2015 Amendment Act to arbitrations commenced on or after 23-10-2015 and related court proceedings."
>
> (emphasis supplied)

60. The Srikrishna Committee Report is dated 30-7-2017, which is long before this Court's judgment in ***BCCI* v. *Kochi Cricket (P) Ltd.*, (2018) 6 SCC 287**. Whatever uncertainty there may have been because of the interpretation by different High Courts has disappeared as a result of ***BCCI* v. *Kochi Cricket (P) Ltd.*, (2018) 6 SCC 287** judgment, the law on Section 26 of the 2015 Amendment Act being laid down with great clarity. To thereafter delete this salutary provision and introduce Section 87 in its place, would be wholly without justification and contrary to the object sought to be achieved by the 2015 Amendment Act, which was enacted pursuant to a detailed Law Commission Report which found various infirmities in the working of the original 1996 statute. Also, it is not understood as to how "uncertainty and prejudice would be caused, as they may have to be heard again", resulting in an "inconsistent position". The amended law would be applied to pending court proceedings, which would then have to be disposed of in accordance therewith, resulting in the benefits of the 2015 Amendment Act now being applied. To refer to the Srikrishna Committee Report (without at all referring to this Court's judgment) even *after* the judgment has pointed out the pitfalls of following such provision, would render Section 87 and the deletion of Section 26 of the 2015 Amendment Act manifestly arbitrary, having been enacted unreasonably, without adequate determining principle, and contrary to the public interest sought to be subserved by the Arbitration Act, 1996 and the 2015 Amendment Act. This is for the reason that a key finding of ***BCCI* v. *Kochi Cricket (P) Ltd.*, (2018) 6 SCC 287** judgment is that the introduction of Section 87 would result in a delay of disposal of arbitration proceedings, and an increase in the interference of courts in arbitration matters,

which defeats the very object of the Arbitration Act, 1996, which was strengthened by the 2015 Amendment Act.

61. Further, this Court has repeatedly held that an application under Section 34 of the Arbitration Act, 1996 is a summary proceeding not in the nature of a regular suit—see***Canara Nidhi Ltd.* v. *M. Shashikala,* (2019) 9 SCC 462**, SCC para 20. As a result, a court reviewing an arbitral award under Section 34 does not sit in appeal over the award, and if the view taken by the arbitrator is possible, no interference is called for — see ***Associated Construction* v. *Pawanhans Helicopters Ltd.*, (2008) 16 SCC 128**, SCC para 17.

62. Also, as has been held in the recent decision in ***Ssangyong Engg. & Construction Co. Ltd.* v. *NHAI,* (2019) 15 SCC 131**, after the 2015 Amendment Act, this Court cannot interfere with an arbitral award on merits (*see* paras 28 and 76 therein). The anomaly, therefore, of Order 41 Rule 5 CPC applying in the case of full-blown appeals, and not being applicable by reason of Section 36 of the Arbitration Act, 1996 when it comes to review of arbitral awards, (where an appeal is in the nature of a rehearing of the original proceeding, where the chance of succeeding is far greater than in a restricted review of arbitral awards under Section 34), is itself a circumstance which militates against the enactment of Section 87, placing the amendments made in the 2015 Amendment Act, in particular Section 36, on a backburner. For this reason also, Section 87 must be struck down as manifestly arbitrary under Article 14. The petitioners are also correct in stating that when the mischief of the misconstruction of Section 36 was corrected after a period of more than 19 years by legislative intervention in 2015, to now work in the reverse direction and bring back the aforesaid mischief itself results in manifest arbitrariness. The retrospective resurrection of an automatic stay not only turns the clock backwards contrary to the object of the Arbitration Act, 1996 and the 2015 Amendment Act, but also results in payments already made under the amended Section 36 to award-holders in a situation of no-stay or conditional-stay now being reversed. In fact, refund applications have been filed in some of the cases before us, praying that monies that have been released for payment as a result of conditional stay orders be returned to the judgment-debtor.

63. Also, it is important to notice that the Srikrishna Committee Report did not refer to the provisions of the Insolvency Code. After the advent of the Insolvency Code on 1-12-2016, the consequence of applying Section 87 is that due to the automatic stay doctrine laid down by judgments of this Court—which have only been reversed today by the present judgment—the award-holder may become insolvent by defaulting on its payment to its suppliers, when such payments would be forthcoming from arbitral awards in cases where there is no stay, or even in cases where conditional stays are granted. Also, an arbitral award-holder is deprived of the

fruits of its award—which is usually obtained after several years of litigating—as a result of the automatic stay, whereas it would be faced with immediate payment to its operational creditors, which payments may not be forthcoming due to monies not being released on account of automatic stays of arbitral awards, exposing such award-holders to the rigors of the Insolvency Code. For all these reasons, the deletion of Section 26 of the 2015 Amendment Act, together with the insertion of Section 87 into the Arbitration Act, 1996 by the 2019 Amendment Act, is struck down as being manifestly arbitrary under Article 14 of the Constitution of India.

64. However, the learned Attorney General cited a number of judgments which state that the court should not ordinarily interfere with the fixation of cut-off dates, unless such fixation appears to be arbitrary or discriminatory [***see* e.g. *Union of India* v. *Parameswaran Match Works*, (1975) 1 SCC 305**] "*10. …* The choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances. Where it is seen that a line or a point there must be and there is no mathematical or logical way of fixing it precisely, the decision of the legislature or its delegate must be accepted unless we can say that it is very wide off the reasonable mark." (SCC p. 311, para 10)] at para 10 and***State of A.P.* v. *N. Subbarayudu*, (2008) 14 SCC 702** "*5. …* This Court is also of the view that fixing cut-off dates is within the domain of the executive authority and the court should not normally interfere with the fixation of a cut-off date by the executive authority unless such order appears to be on the face of it blatantly discriminatory and arbitrary." (SCC p. 703, para 5)] at paras 5 to 9].

65. In the present case, the challenge is not to the fixing of 23-10-2015 as a cut-off date, as the aforesaid date is the date on which the 2015 Amendment Act came into force. For this reason, the aforesaid judgments have no application. Instead, what has been found to be manifestly arbitrary is the non-bifurcation of court proceedings and arbitration proceedings with reference to the aforesaid date, resulting in improvements in the working of the Arbitration Act, 1996 being put on a backburner. This argument of the learned Attorney General for India also therefore must be rejected.

66. The result is that ***BCCI* v. *Kochi Cricket (P) Ltd.*, (2018) 6 SCC 287** judgment will therefore continue to apply so as to make applicable the salutary amendments made by the 2015 Amendment Act to all court proceedings initiated after 23-10-2015.

67. In this view of the matter, it is unnecessary to examine the constitutional challenge to the 2019 Amendment Act based on Articles 19(1)(*g*), 21 and 300-A of the Constitution of India."

(emphasis supplied)

58. Thus, the Hon'ble Supreme Court, in ***Hindustan Construction Co. Ltd.*** (*supra*), struck down Section 15 of the 2019 Amendment Act, on the ground that the deletion of Section 26 of the 2015 Amendment Act, and the introduction of Section 87 by the 2019 Amendment Act, resulted in manifest arbitrariness. The Court held that these changes impermissibly nullified the clear legislative bifurcation between arbitral proceedings commenced prior to and those commenced after 23.10.2015. The judgment unequivocally reaffirmed the mandate of Section 26 of the 2015 Amendment Act and restored the settled legal position governing the prospective application of the 2015 amendments.

59. In light of Section 26 of the 2015 Amendment Act, as authoritatively interpreted and reaffirmed by the Hon'ble Supreme Court, the issue of unilateral appointment of arbitrators has consistently been examined on the basis of whether the arbitral proceedings commenced prior to or after the cut-off date of 23.10.2015.

60. The effect of the commencement of arbitral proceedings prior to the 2015 Amendment Act has been authoritatively considered in ***Parmar Construction*** (*supra*). The Hon'ble Supreme Court has categorically held that the provisions of the 2015 Amendment Act are prospective in nature and do not apply to arbitral proceedings commenced in accordance with Section 21 of the principal Act prior to 23.10.2015, unless the parties otherwise agree. It has further been held that under the unamended Act, primacy must be accorded to the appointment procedure contractually agreed upon between the parties. The relevant extracts have been reproduced hereinbelow:

"**25.** As on 1-1-2016, the 2015 Amendment Act was gazetted and

according to Section 1(2) of the 2015 Amendment Act, it was deemed to have come into force on 23-10-2015. Section 21 of the 1996 Act clearly envisages that unless otherwise agreed by the parties, the arbitral proceedings in respect of a dispute shall commence from the date on which a request for that dispute to be referred to arbitration is received by the respondent and the plain reading of Section 26 of the 2015 Amendment Act is self-explicit, leaves no room for interpretation. Sections 21 and 26 of the 1996 Act/the 2015 Amendment Act relevant for the purpose are extracted hereunder:

> "**21.** Commencement of arbitral proceedings.—Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.
>
> ***
>
> 26. Act not to apply to pending arbitral proceedings.—Nothing contained in this Act shall apply to the arbitral proceedings commenced, in accordance with the provisions of Section 21 of the principal Act, before the commencement of this Act unless the parties otherwise agree but this Act shall apply in relation to arbitral proceedings commenced on or after the date of commencement of this Act."

26. The conjoint reading of Section 21 read with Section 26 leaves no manner of doubt that the provisions of the 2015 Amendment Act shall not apply to such of the arbitral proceedings which have commenced in terms of the provisions of Section 21 of the principal Act unless the parties otherwise agree. The effect of Section 21 read with Section 26 of the 2015 Amendment Act has been examined by this Court in ***Aravali Power Co. (P) Ltd. v. Era Infra Engg. Ltd., (2017) 15 SCC 32*** and taking note of Section 26 of the 2015 Amendment Act laid down the broad principles as under: (SCC p. 53, para 22)

> "**22.** The principles which emerge from the decisions referred to above are:
>
> 22.1. In cases governed by the 1996 Act as it stood before the Amendment Act came into force:
>
> **22.1.1.** The fact that the named arbitrator is an employee of one of the parties is not ipso facto a ground to raise a presumption of bias or partiality or lack of independence on his part. There can however be a justifiable apprehension about the independence or impartiality of an employee arbitrator, if such person was the controlling or dealing authority in regard to the subject contract or if he is a direct subordinate to the officer whose decision is the subject-matter of the dispute.

22.1.2. Unless the cause of action for invoking jurisdiction under clauses (a), (b) or (c) of sub-section (6) of Section 11 of the 1996 Act arises, there is no question of the Chief Justice or his designate exercising power under sub-section (6) of Section 11.

22.1.3. The Chief Justice or his designate while exercising power under sub-section (6) of Section 11 shall endeavour to give effect to the appointment procedure prescribed in the arbitration clause.

22.1.4. While exercising such power under sub-section (6) of Section 11, if circumstances exist, giving rise to justifiable doubts as to the independence and impartiality of the person nominated, or if other circumstances warrant appointment of an independent arbitrator by ignoring the procedure prescribed, the Chief Justice or his designate may, for reasons to be recorded ignore the designated arbitrator and appoint someone else.

22.2. In cases governed by the 1996 Act after the Amendment Act has come into force: If the arbitration clause finds foul with the amended provisions, the appointment of the arbitrator even if apparently in conformity with the arbitration clause in the agreement, would be illegal and thus the court would be within its powers to appoint such arbitrator(s) as may be permissible."

which has been further considered in ***S.P. Singla Constructions (P) Ltd. v. State of H.P., (2019) 2 SCC 488***: (SCC p. 495, para 16)

"16. Considering the facts and circumstances of the present case, we are not inclined to go into the merits of this contention of the appellant nor examine the correctness or otherwise of the above view taken by the Delhi High Court in ***Ratna Infrastructure Projects (P) Ltd. v. Meja Urja Nigam (P) Ltd., 2017 SCC OnLine Del 7808***; suffice it to note that as per Section 26 of the Arbitration and Conciliation (Amendment) Act, 2015, the provisions of the amended 2015 Act shall not apply to the arbitral proceedings commenced in accordance with the provisions of Section 21 of the principal Act before the commencement of the Amendment Act unless the parties otherwise agree. In the facts and circumstances of the present case, the proviso in Clause (65) of the general conditions of the contract cannot be taken to be the agreement between the parties so as to apply the provisions of the amended Act. As per Section 26 of the Act, the provisions of the 2015 Amendment Act shall apply in relation to arbitral proceedings commenced on or after the date of commencement of the 2015 Amendment Act (w.e.f. 23-10-2015). In the present case, arbitration

proceedings commenced way back in 2013, much prior to coming into force of the amended Act and therefore, provisions of the amended Act cannot be invoked."

27. We are also of the view that the 2015 Amendment Act which came into force i.e. on 23-10-2015, shall not apply to the arbitral proceedings which have commenced in accordance with the provisions of Section 21 of the principal Act, 1996 before the coming into force of the 2015 Amendment Act, unless the parties otherwise agree.

28. In the instant case, the request was made and received by the appellants in the appeal concerned much before the 2015 Amendment Act came into force. Whether the application was pending for appointment of an arbitrator or in the case of rejection because of no claim as in the instant case for appointment of an arbitrator including change/substitution of arbitrator, would not be of any legal effect for invoking the provisions of the 2015 Amendment Act in terms of Section 21 of the principal Act, 1996. In our considered view, the applications/requests made by the respondent contractors deserve to be examined in accordance with the principal Act, 1996 without taking resort to the 2015 Amendment Act which came into force from 23-10-2015.

****

38. The further submission made by the appellants that the High Court has committed error in appointing an independent arbitrator without resorting to the arbitrator which has been assigned to arbitrate the dispute as referred to under Clause 64(3) of the contract. To examine the issue any further, it may be relevant to take note of three clauses in sub-section (6) of Section 11 of the 1996 Act (pre-amended Act, 2015) which is as under:

"**11. (6)** Where, under an appointment procedure agreed upon by the parties—

(a) a party fails to act as required under that procedure; or

(b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or

(c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure,

a party may request the Chief Justice or any person or institution designated by him to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment."

39. Clause (c) of sub-section (6) of Section 11 relates to failure to perform any function entrusted to a person including an institution and also failure to act under the procedure agreed upon by the parties. In other words, clause (a) refers to the party failing to act as required under that procedure; clause (b) refers to the agreement

where the parties fail to reach to an agreement expected of them under that procedure and clause (c) relates to a person which may not be a party to the agreement but has given his consent to the agreement and what further transpires is that before any other alternative is resorted to, agreed procedure has to be given its precedence and the terms of the agreement have to be given its due effect as agreed by the parties to the extent possible. The corrective measures have to be taken first and the court is the last resort. It is also to be noticed that by appointing an arbitrator in terms of sub-section (8) of Section 11 of the 1996 Act, due regard has to be given to the qualification required for the arbitrator by the agreement of the parties and also the other considerations such as to secure an independent and impartial arbitrator. To fulfil the object with terms and conditions which are cumulative in nature, it is advisable for the court to ensure that the remedy provided as agreed between the parties in terms of the contract is first exhausted.

****

42. This Court has put emphasis to act on the agreed terms and to first resort to the procedure as prescribed and open for the parties to the agreement to settle differences/disputes arising under the terms of the contract through appointment of a designated arbitrator although the name in the arbitration agreement is not mandatory or must but emphasis should always be on the terms of the arbitration agreement to be adhered to or given effect as closely as possible.

*****

6. Almost the same situation was examined by this Court in ***Union of India v. U.P. State Bridge Corpn. Ltd., (2015) 2 SCC 52*** and after placing reliance on ***North Eastern Railway v. Tripple Engg. Works, (2014) 9 SCC 288*** held that since the Arbitral Tribunal has failed to perform and to conclude the proceedings, appointed an independent arbitrator in exercise of power under Section 11(6) of the 1996 Act. In the given circumstances, it was the duty of the High Court to first resort to the mechanism in appointment of an arbitrator as per the terms of contract as agreed by the parties and the default procedure was opened to be resorted to if the arbitrator appointed in terms of the agreement failed to discharge its obligations or to arbitrate the dispute which was not the case set up by either of the parties.

47. To conclude, in our considered view, the High Court was not justified in appointing an independent arbitrator without resorting to the procedure for appointment of an arbitrator which has been prescribed under Clause 64(3) of the contract under the inbuilt mechanism as agreed by the parties.

47. To conclude, in our considered view, the High Court was not justified in appointing an independent arbitrator without resorting to the procedure for appointment of an arbitrator which has been

prescribed under Clause 64(3) of the contract under the inbuilt mechanism as agreed by the parties."

(emphasis supplied)

61. A similar position was reiterated by the Hon'ble Supreme Court in ***S.P. Singla Constructions (P) Ltd. v. State of H.P.***[34], wherein the Apex Court, while dealing with an appointment made prior to the 2015 Amendment Act, held that the amended provisions could not be invoked to invalidate an appointment made in accordance with the contractual terms governing the parties prior to 23.10.2015. The Hon'ble Supreme Court further reaffirmed that departmental or unilateral appointments made under pre-amendment agreements cannot be retrospectively invalidated by invoking the 2015 Amendment Act. The relevant paragraphs of the said judgment read as follows:

"**16.** Considering the facts and circumstances of the present case, we are not inclined to go into the merits of this contention of the appellant nor examine the correctness or otherwise of the above view taken by the Delhi High Court in ***Ratna Infrastructure Projects (P) Ltd.* v. *Meja Urja Nigam (P) Ltd.*, 2017 SCC OnLine Del 7808**; suffice it to note that as per Section 26 of the Arbitration and Conciliation (Amendment) Act, 2015, the provisions of the amended 2015 Act shall not apply to the arbitral proceedings commenced in accordance with the provisions of Section 21 of the principal Act before the commencement of the Amendment Act unless the parties otherwise agree. In the facts and circumstances of the present case, the proviso in Clause (65) of the general conditions of the contract cannot be taken to be the agreement between the parties so as to apply the provisions of the amended Act. As per Section 26 of the Act, the provisions of the Amendment Act, 2015 shall apply in relation to arbitral proceedings commenced on or after the date of commencement of the Amendment Act, 2015 (w.e.f. 23-10-2015). In the present case, arbitration proceedings commenced way back in 2013, much prior to coming into force of the amended Act and therefore, provisions of the amended Act cannot be invoked.

17. In ***BCCI* v. *Kochi Cricket (P) Ltd.*, (2018) 6 SCC 287**, this Court has held that the provisions of the Amendment Act, 2015

[34](2019) 2 SCC 488

(with effect from 23-10-2015) cannot have retrospective operation in the arbitral proceedings already commenced unless the parties otherwise agree and held as under : (SCC p. 313, para 37)

> "*37.* What will be noticed, so far as the first part is concerned, which states—
>
> > '**26.** ***Act not to apply to pending arbitral proceedings***.—Nothing contained in this Act shall apply to the arbitral proceedings commenced, in accordance with the provisions of Section 21 of the principal Act, before the commencement of this Act unless the parties otherwise agree.…'
> >
> > is that: (*1*) 'the arbitral proceedings' and their commencement is mentioned in the context of Section 21 of the principal Act; (*2*) the expression used is 'to' and not 'in relation to'; and (*3*) parties may otherwise agree. So far as the second part of Section 26 is concerned, namely, the part which reads, '… but this Act shall apply in relation to arbitral proceedings commenced on or after the date of commencement of this Act' makes it clear that the expression 'in relation to' is used; and the expression 'the' arbitral proceedings and 'in accordance with the provisions of Section 21 of the principal Act' is conspicuous by its absence."

21. In the present case, the arbitrator has been appointed as per Clause (65) of the agreement and as per the provisions of law. Once, the appointment of an arbitrator is made at the instance of the Government, the arbitration agreement could not have been invoked for the second time.

25. Inspite of extension of time, since the appellant contractor had not filed statement of claim, the arbitrator terminated the proceedings under Section 25(*a*) of the 1996 Act by proceedings dated 6-8-2014. The appellant contractor did not file his statement of claim before the arbitrator since the appellant had approached the High Court by filing petition under Section 11(6) of the 1996 Act, probably under the advice that the appellant can get an independent arbitrator appointed. The appellant had been writing letters to the arbitrator before the hearing seeking adjournment. However, on the fourth occasion, proceedings were simply terminated; since no hearings were held on earlier occasions, he expected that his request might be accepted. The arbitrator could have issued a notice warning the appellant that no adjournment would be granted under any circumstances. Since, no such warning was given, we deem it appropriate to set aside the order of termination. The appellant had made a claim on account of delay as indicated in his letter dated 18-10-2013 under various heads. In the interest of justice, in our considered view, an opportunity is to be

> afforded to the appellant to go before the departmental arbitrator (as agreed by the parties in Clause (65) of the general conditions of contract) and the proceedings of the arbitrator dated 6-8-2014 terminating the proceedings is to be set aside. We are conscious that after the Amendment Act, 2015, there cannot be a departmental arbitrator. As discussed earlier, in this case, the agreement between the parties is dated 19-12-2006 and the relationship between the parties are governed by the general conditions of the contract dated 19-12-2006, the provisions of the Amendment Act, 2015 cannot be invoked."

62. This position has been consistently followed in a catena of judgments rendered by the Hon'ble Supreme Court as well as by Division Benches of this Court, drawing a clear and unwavering distinction between arbitral proceedings commenced before and after the enforcement of the 2015 Amendment Act.

63. As regards reliance placed by both parties on isolated observations from the Constitution Bench judgment of the Hon'ble Supreme Court in ***Central Organisation for Railway Electrification*** (*supra*), this Court is of the considered view that the said judgment was rendered in slightly distinct statutory and factual context, primarily concerning the incorporation and impact of Section 12(5) read with the Seventh Schedule of the A&C Act. The issues therein did not expressly pertain to the applicability of the 2015 Amendment Act to arbitral proceedings commenced prior to 23.10.2015. Consequently, selective reliance on isolated paragraphs from the said judgment does not advance the case of either party in the present proceedings.

64. The Objector has sought to contend that the legal position governing the unilateral appointment of a sole arbitrator has since undergone a material change and now stands conclusively settled in her favour, placing reliance upon the decisions in ***M/s Mahavir***

Prasad Gupta & Sons (*supra*), rendered by a Division Bench of this Court, ***Vineet Dujodwala*** (*supra*), delivered by a learned Co-ordinate Bench of this Court, and the recent judgment of the Hon'ble Supreme Court in ***Bhadra International*** (*supra*). Upon a careful and holistic examination of the aforesaid precedents, this Court finds the said assertion to be wholly misconceived and unsustainable in law.

65. In the considered opinion of this Court, none of the judgments relied upon by the Objector either support or advance the proposition that the legal position governing unilateral appointment of a sole arbitrator, particularly in cases where the arbitral proceedings were invoked prior to the coming into force of the 2015 Amendment Act, has undergone any material change so as to invalidate arbitral proceedings or awards which had already attained finality.

66. Insofar as ***M/s Mahavir Prasad Gupta & Sons*** (*supra*) is concerned, a bare reading of the factual matrix makes it abundantly clear that the invocation of the arbitration clause in that case took place well after the enforcement of the 2015 Amendment Act, i.e., after 23.10.2015. This is evident from the facts as recorded in the judgment itself, which read as under:

> **"9.** The Respondent being dissatisfied with the work, did not release the final payment to the Appellant. Consequently, the Appellant invoked the arbitration clause vide letter dated 18.10.2018, and pursuant to the invocation, the Respondent appointed Sh. A.K. Singhal, former Director General (Works), CPWD, as the Sole Arbitrator to adjudicate the disputes between the parties."
>
> ***(emphasis supplied)***

67. A similar position emerges from a reading of the judgment of the Hon'ble Supreme Court in ***Bhadra International*** (*supra*). The Hon'ble Supreme Court has, in that case, itself noticed the relevant

facts demonstrating that the disputes arose and the arbitration clause was invoked after the coming into force of the Amendment Act, 2015. The relevant extract reads as under:

> "**I. FACTUAL MATRIX**
> **4.** The facts giving rise to the appeals may be summarized as under:—
> *****
> iv. On 23.10.2015, the Arbitration and Conciliation (Amendment) Act, 2015 came into effect (for short, "**the Amendment Act, 2015**"), by which sub-section (5) was inserted into Section 12. The provision reads thus:—
> > "*[(5) Notwithstanding any prior agreement to the contrary, any person whose relationship, with the parties or counsel or the subject-matter of the dispute, falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator:*
> > *Provided that parties may, subsequent to disputes having arisen between them, waive the applicability of this sub-section by an express agreement in writing.]*"
> v. Sometime, in the year 2015, various disputes cropped up between the appellants and the respondent herein. Accordingly, the appellants *vide* notice dated 27.11.2015 invoked the arbitration clause and requested the respondent to appoint an arbitrator in terms of Clause 78 of the aforesaid License Agreement. The relevant part of the notice reads thus:—
> > "*We also like to bring out most humbly that it is incumbent upon the Chairman AAI to appoint the Sole Arbitrator within a reasonable time, least we might not be left with no recourse, but to seek a relief under Section 11, Sub Section 6, Chapter III of the Arbitration & Reconciliation Act 1996*."
> ***(emphasis supplied)***

68. Consequently, ***Bhadra International*** (*supra*) also does not lend any support to the Objector's submission that a subsequent change in law would invalidate arbitral proceedings or awards arising out of arbitrations invoked prior to the 2015 Amendment Act.

69. The last judgment relied upon by the Objector is ***Vineet Dujodwala*** (*supra*), rendered by a learned Co-ordinate Bench of this Court. It is an undisputed position of fact that, in the said case, the

appointment of the arbitrator had taken place prior to the enforcement of the 2015 Amendment Act. Notwithstanding the same, the learned Judge proceeded to set aside the arbitral award on the ground, *inter alia*, that the appointment of the arbitrator was unilateral. For the sake of clarity, the relevant portion of the judgment has been extracted hereinbelow:

> "Re. unilateral appointment of the learned Arbitrator
> **20.** Perhaps the most damaging defect in the entire process is the fact that the appointment of the learned arbitrator was unilateral. A unilateral appointment, in an arbitral proceeding, is completely impermissible in law.
> **21.** This is the position that has existed even prior to the amendment of the 1996 Act. The Supreme Court has, even in its decisions prior to the said amendment, clearly held that the very essence of arbitral proceedings is consensus *ad idem* and that, therefore, there can be no question of an arbitration by an arbitrator appointed by one of the parties without the consent of the other. One may refer, in this context, to the following passage from ***Dharma Prathishthanam* v. *Madhok Construction (P) Ltd.*** **[(2005) 9 SCC 686]**:
>
> > **"14.** In ***Thawardas Pherumal* v. *Union of India*** **[AIR 1955 SC 468]**a question arose in the context that no specific question of law was referred to, either by agreement or by compulsion, for decision of the arbitrator and yet the same was decided howsoever assuming it to be within his jurisdiction and essentially for him to decide the same incidentally. It was held that: (SCR p. 58)
> >
> > > "A reference requires the assent of *both* sides. If one side is not prepared to submit a given matter to arbitration when there is an agreement between them that it should be referred, then recourse must be had to the court under Section 20 of the Act and the recalcitrant party can then be compelled to submit the matter under sub-section (4). In the absence of either, agreement by *both* sides about the terms of reference, or an order of the court under Section 20(4) compelling a reference, the arbitrator is not vested with the necessary exclusive jurisdiction."
> >
> > > (emphasis in original)
> >
> > 15. A Constitution Bench held in ***Waverly Jute Mills Co. Ltd.* v. *Raymon and Co. (India) (P) Ltd.*** **[AIR 1963 SC 90]** that:

> "[A]n agreement for arbitration is the very foundation on which the jurisdiction of the arbitrators to act rests, and where that is not in existence, at the ***time*** when they enter on their duties, the proceedings must be held to be wholly without jurisdiction. And this defect is not cured by the appearance of the parties in those proceedings, even if that is without protest, because it is well settled that consent cannot confer jurisdiction."
>
> 16. Again a three-Judge Bench held in ***Union of India* v. *A.L. Rallia Ram* [(1964) 3 SCR 164]** that it is from the terms of the arbitration agreement that the arbitrator derives his authority to arbitrate and in absence thereof the proceedings of the arbitrator would be unauthorised."
>
> (Italics in original; underscoring supplied)
>
> **22.** Admittedly, the appointment of the arbitrator in the present case was unilateral. That single factor, even without reference to any other infirmity, is sufficient to vitiate the award.
>
> **23.** For all the aforesaid reasons, without entering into merits, the impugned award is set aside."

70. However, *de hors* the factual distinctions between ***Vineet Dujodwala*** (*supra*) and the present case, a careful reading of the extracted portions of the judgment reveals that the learned Co-ordinate Bench did not consider the implications of Section 26 of the 2015 Amendment Act. Furthermore, the learned Bench did not advert to the subsequent line of authoritative judgments of the Hon'ble Supreme Court, which have consistently clarified the legal position regarding unilateral appointments of arbitrators in arbitrations initiated both prior to and subsequent to the enactment of the 2015 Amendment Act. Consequently, the conclusions drawn in ***Vineet Dujodwala*** (*supra*) do not reflect the full statutory and judicial context in which the present issue arises.

71. With the greatest respect, it appears that the learned Co-ordinate Bench overlooked the settled legal position on this matter, which has

since been consistently reiterated not only by the Hon'ble Supreme Court but also by Division Benches of this Court, including in ***DD Global Capital*** (*supra*). Moreover, the judgments cited in ***Vineet Dujodwala*** (*supra*) were rendered in materially distinct factual and statutory contexts and cannot be interpreted as laying down a principle that a unilateral appointment of an arbitrator in all pre-2015 Amendment Act arbitrations would *ipso facto* render the proceedings *void* or *coram non judice*. The factual and legislative matrix in those cases differs significantly from the present matter, and therefore, they do not provide any legal foundation for the Objector's assertion.

72. It is well settled that an executing court cannot go behind the award and is bound to execute it "*as is*". The arbitral award in the present case has not only been passed but has also been upheld at every stage, including by the Hon'ble Supreme Court. The courts have specifically examined the challenge to the award on the ground of alleged "*unilateral appointment*" of the arbitrator. The Hon'ble Supreme Court has categorically held that the amendments to the A&C Act as done in 2015 are prospective in nature.

73. While it is true that an executing court may examine whether an award is a nullity or *non est* in cases where there exists an inherent lack of jurisdiction in the court or tribunal that rendered the decision, no such infirmity arises in the present case. On the contrary, all courts have consistently held that there is absolutely no defect in the award, particularly on the ground of "*unilateral appointment*". In these circumstances, there being no inherent lack of jurisdiction in the arbitral tribunal, this Court, acting as the executing court, is bound to execute the award as it stands.

74. In view of the foregoing discussion, and having regard to the

authoritative pronouncements of the Hon'ble Supreme Court and Division Benches of this Court, it is clear that none of the precedents cited by the Objector either support or advance the proposition that the legal position governing unilateral appointments of a sole arbitrator has undergone any material change in her favour. Consequently, the contention raised by the Objector is entirely devoid of merit and is, therefore, rejected.

75. At this stage, this Court feels compelled to express its strong disapproval of the manner in which the Objector has conducted herself in filing the present Objection Application. The approach adopted by the Objector reflects a calculated attempt to obstruct and delay the enforcement of a decree which has already been conclusively adjudicated and is legally binding. Such conduct, if condoned, undermines the efficacy of judicial processes and the faith of litigants in the rule of law.

76. It is pertinent to note that in 2019, the Objector had filed an earlier Objection Application, being *EX.APPL.(OS) 576/2019*, challenging the executability of the Award on the ground, *inter alia*, that the Award was *non est* in law, being a unilateral appointment of the learned Arbitrator. This objection application was subsequently withdrawn by the Objector without seeking any liberty to file a fresh objection. The Court, in its order dated 07.11.2019, recorded this withdrawal as follows:

> "5. Learned counsel for the judgment debtor submits that he has filed the objections which he has been instructed to withdraw at this stage. The objections EX.APPL.(OS) 576/2019 are dismissed as withdrawn."

77. This record makes it clear that the Objector voluntarily abandoned her earlier objection and did not reserve any right to revive

the same issue.

78. Despite the settled history of the matter, nearly six years later, on 24.10.2025, the Objector has filed the present Objection Application, being *EX.APPL.(OS) 1522/2025*, once again raising the identical issue of the alleged unilateral appointment of the Arbitrator. This belated revival of an objection that had been previously considered and effectively abandoned, under the pretext of a change in law, clearly demonstrates an intent to delay or obstruct the enforcement of a legally binding arbitral award.

79. It is particularly noteworthy that the issue of the alleged unilateral appointment of the Arbitrator has been persistently raised by the Objector at every stage of the proceedings, before the learned Arbitrator, during appellate proceedings, and even before the Hon'ble Supreme Court. This repeated invocation of the same ground, more than ten years after the filing of the Execution Petition and over eleven years after the Award was rendered, cannot be regarded as a genuine or *bona fide* exercise of legal rights. Rather, it reflects a deliberate attempt to obstruct the enforcement of a valid and binding arbitral award, thereby clogging the machinery of justice. This Court views such conduct as a clear abuse of process, aimed at frustrating execution proceedings, which cannot be permitted or condoned in a judicial system committed to upholding the rule of law.

80. The directions issued by the Hon'ble Supreme Court in ***Rahul S. Shah v. Jinendra Kumar Gandhi***[35], delivered by a three-Judge Bench, are particularly instructive in the present context. The Apex Court, acknowledging the urgent need to curb delays in execution

[35] (2021) 6 SCC 418

proceedings, observed that frivolous, repetitive, or *mala fide* objections not only undermine the timely enforcement of decrees and awards but also impede the overall administration of justice.

81. In this backdrop, the Apex Court laid down comprehensive directions aimed at ensuring the efficient and expeditious conduct of execution proceedings, emphasizing that parties must refrain from raising objections that are clearly untenable or previously adjudicated. These directions serve as a guiding framework to prevent abuse of process and to uphold the principle that the enforcement of decrees and awards must not be obstructed by dilatory or obstructive tactics. The relevant portion of the said judgment reads as follows:

> "**41.** Having regard to the above background, wherein there is urgent need to reduce delays in the execution proceedings we deem it appropriate to issue few directions to do complete justice. These directions are in exercise of our jurisdiction under Article 142 read with Article 141 and Article 144 of the Constitution of India in larger public interest to subserve the process of justice so as to bring to an end the unnecessary ordeal of litigation faced by parties awaiting fruits of decree and in larger perspective affecting the faith of the litigants in the process of law.
> **42.** All courts dealing with suits and execution proceedings shall mandatorily follow the below mentioned directions:
> **42.1.** In suits relating to delivery of possession, the court must examine the parties to the suit under Order 10 in relation to third-party interest and further exercise the power under Order 11 Rule 14 asking parties to disclose and produce documents, upon oath, which are in possession of the parties including declaration pertaining to third-party interest in such properties.
> **42.2.** In appropriate cases, where the possession is not in dispute and not a question of fact for adjudication before the court, the court may appoint Commissioner to assess the accurate description and status of the property.
> **42.3.** After examination of parties under Order 10 or production of documents under Order 11 or receipt of Commission report, the court must add all necessary or proper parties to the suit, so as to avoid multiplicity of proceedings and also make such joinder of cause of action in the same suit.
> **42.4.** Under Order 40 Rule 1 CPC, a Court Receiver can be appointed to monitor the status of the property in question as *custodia legis* for proper adjudication of the matter.

42.5. The court must, before passing the decree, pertaining to delivery of possession of a property ensure that the decree is unambiguous so as to not only contain clear description of the property but also having regard to the status of the property.

42.6. In a money suit, the court must invariably resort to Order 21 Rule 11, ensuring immediate execution of decree for payment of money on oral application.

42.7. In a suit for payment of money, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit. The court may further, at any stage, in appropriate cases during the pendency of suit, using powers under Section 151 CPC, demand security to ensure satisfaction of any decree.

42.8. The court exercising jurisdiction under Section 47 or under Order 21 CPC, must not issue notice on an application of third party claiming rights in a mechanical manner. Further, the court should refrain from entertaining any such application(s) that has already been considered by the court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.

42.9. The court should allow taking of evidence during the execution proceedings only in exceptional and rare cases where the question of fact could not be decided by resorting to any other expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.

42.10. The court must in appropriate cases where it finds the objection or resistance or claim to be frivolous or mala fide, resort to sub-rule (2) of Rule 98 of Order 21 as well as grant compensatory costs in accordance with Section 35-A.

42.11. Under Section 60 CPC the term "… in name of the judgment-debtor or by another person in trust for him or on his behalf" should be read liberally to incorporate any other person from whom he may have the ability to derive share, profit or property.

42.12. The executing court must dispose of the execution proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.

42.13. The executing court may on satisfaction of the fact that it is not possible to execute the decree without police assistance, direct the police station concerned to provide police assistance to such officials who are working towards execution of the decree. Further, in case an offence against the public servant while discharging his duties is brought to the knowledge of the court, the same must be dealt with stringently in accordance with law.

42.14. The Judicial Academies must prepare manuals and ensure continuous training through appropriate mediums to the court

personnel/staff executing the warrants, carrying out attachment and sale and any other official duties for executing orders issued by the executing courts.

43. We further direct all the High Courts to reconsider and update all the Rules relating to execution of decrees, made under exercise of its powers under Article 227 of the Constitution of India and Section 122 CPC, within one year of the date of this order. The High Courts must ensure that the Rules are in consonance with CPC and the above directions, with an endeavour to expedite the process of execution with the use of information technology tools. Until such time these Rules are brought into existence, the above directions shall remain enforceable."

(emphasis supplied)

82. These directions underscore the fundamental principle that execution proceedings must be conducted and concluded expeditiously, ensuring that the decree-holder's rights are not unduly delayed or thwarted. Any attempt to raise repetitive, frivolous, or obstructive objections in such proceedings is impermissible and cannot be tolerated, as it undermines the efficacy of the judicial process.

83. In the present case, raising objections regarding the jurisdiction to pass the Award, an issue that has already been conclusively settled, after more than a decade, and after previously withdrawing a similar objection, is an impermissible attempt to obstruct justice. While the Court acknowledges that parties are entitled to raise legitimate legal issues in accordance with the law, this entitlement does not extend to repeated obstruction or delay tactics. The conduct of the Objector in filing the present Objection Application is thus inconsistent with the principles of fair play, good faith, and the proper administration of justice.

Decision:

84. In view of the foregoing analysis and discussion, the present

Objection Application is dismissed in its entirety. Considering the manner in which the Objector has pursued this application, reiterating identical objections over a prolonged period, despite earlier opportunities to raise them and notwithstanding the settled legal position, this Court finds it just and appropriate to impose costs on the Objector. Accordingly, a total cost of **Rs. 1,00,000/-** is imposed, to be paid as follows:

(i). Rs. 50,000/- to the DH, and

(ii). Rs. 50,000/- to the Delhi High Court Bar Association.

85. The Objector shall make the aforementioned payments within a period of two weeks from the date of this order.

86. Accordingly, the Execution Application, ***EX.APPL.(OS) 1522/2025***, stands disposed of in the above terms.

EX.P. 386/2015, EX.APPL.(OS) 233/2017 (U/O XXI RULE 46), EX.APPL.(OS) 337/2017 (U/O XXI Rule 58), EX.APPL.(OS) 339/2017 (U/O XXI Rule 46A), EX.APPL.(OS) 423/2018 (U/O 21 Rule 64 & Rule 72)

87. List the Execution Petition, along with the pending applications, on 17.02.2026 for further proceedings.

HARISH VAIDYANATHAN SHANKAR, J.

JANUARY 28, 2026/sm/her