CHAPTER - VI
Enforcement and Recourses Against Arbitral Awards

Section 36 of the Arbitration and conciliation Act 1996 provides for direct enforcement of awards without having to get them converted into a rule of the court. Under the preceding 1940 Act, an award could be enforced after crossing a few hurdles between the award and its enforcement. It had first to be filed in the court where it would be converted into a judgment in terms of the award. This was known as making the award a rule of the court. It would than be converted into a decree for its enforcement\(^1\). All these steps are no longer necessary under the 1996 Act. An award is a decree in itself and is directly enforceable as such\(^2\). By virtue of Section 34(1), recourse to the court against an arbitral award cannot be made beyond the period prescribed. The importance of the period fixed under Section 34 is enforceable as soon as the limitation period under Section 34 expires. This is a significant departure from the provisions of the Arbitration Act, 1940. Now the consequence of the time expiring under Section 34 of the 1996 Act is that the award becomes immediately enforceable without any further act of the court\(^3\).

An award under the 1940 Act provides an illustration as to jurisdiction for this purpose. The works were executed in India. In accordance with the parties, agreement the award was delivered in London.

1. Walter Rosario v corporation bank AIR 2001 Kant. 483
The Indian party applied to the Bombay High Court for an order that the award be filed in Bombay for its enforcement. The Supreme Court ruled that this was legally allowable\(^4\).

The execution of an award has to be in accordance with the provisions of the Civil Procedure Code. Section 31(4) of the 1940 Act (repealed) had no application in that respect\(^5\).

A compromise award has the effect of a decree\(^6\).

**Registration of award**

An award under the Bihar Panchayat Raj Act, 1948 effecting partition of properties was held to be not enforceable unless it was registered under the Registration Act, 1908. It was not admissible in evidence in the absence of registration. The partition of properties was the effect of a document which was a panchnrama award and was not an award under the Arbitration Act. The subsequent conduct of the parties in apportioning the property as between themselves and the recitals in their deed were admissible in evidence\(^7\). An award cannot operate as a transfer of property. It can only declare rights and may direct the parties to perfect those rights by formal conveyance where necessary.

An award on a matter of family partition allotted an item of immovable property to one brother and directed him to pay a sum of money to the other two brothers. The court said that the award was compulsorily registrable\(^8\).

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4. Sumitomo Heavy Industries Ltd v ONGC Ltd, (1998) 1 SCC 305
5. N.V. Chowdhary v Hindustan Steel Works Construction Ltd, AIR 2002 NOC 15 (AP)
6. Saraswati Trading Agency v Union of India, AIR 2002 Cal 51
7. Najamuddin v Bibi Nafirmunnisa, AIR 1991 Pat 239
Stamp duty

An unstamped or inadequately stamped award is a curable irregularity\(^9\). An unstamped award could not be filed in court for its enforcement. The arbitrator had become functus officio after passing the award. He had no power of rewriting it on stamp paper for filing it in court or presenting it for registration. The court said that the award was a complete nullity ab initio. It was not to be set aside, but only to be removed from the file of the court\(^10\).

An unstamped award can be used for a collateral purpose, for example, for proving the nature of the property involved and the nature of possession of the family members. The award in this case determined shares of members in the joint family property. The award in this case determined shares of members in the joint family property. The award allowed them to go on enjoying their respective shares. It also spoke of the nature of their possession. For these reasons it require stamp dity\(^11\).

Outright rejection of an unstamped award was held to be not proper. The could should have given opportunity to the party to rectify the error in the matter of stamp\(^12\).

Acceptance of award by parties

Where both parties signed the award reiterating that they had agreed to refer their dispute to arbitration but subsequently one of them filed an appeal

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12. Union of India v Madhani Construction Corpn Ltd, AIR 2003 All 346
for review of the award and still thereafter withdrew the application pursuant to a fresh agreement reaffirming the reference and their acceptance of the award, it was held that this was a sufficiently proper agreement of reference in terms of Section 2(a) (of the 1940 repealed Act) and that the court having passed a decree, a suit for setting aside the decree was barred by res judicata.\(^{13}\)

**Enforcement of award in part**

The import of the words “pronounce judgment according to the award” (as they appeared in Section 17 of the repealed 1940 Act) was explained by the Supreme Court in Mattapalli Chelamayya v Mattapalli Venkatratnam.\(^{14}\) In this case the award was not registered, though a portion of the award related to immovable property and was thus compulsorily registrable. It was held that a decree could be passed in terms of that part of the award which was severable from the other part of it which was invalid for any reason. Where a severable part of an award cannot be given effect to for a lawful reason, there is no bar to enforce the part to which effect could be justly given.\(^{15}\) These rulings were followed by the High Court of Delhi so as to enforce a part of the award.\(^{16}\) In a dispute between a contractor and a housing society, an arbitration award was passed and filed in the court to which no objection was filed by the society. The contractor wanted some portion of the award to be modified court pending further consideration of his objections.

\(^{13}\) Vaidya Harishankar Laxmiram v Pratapray Harishankar, (1988) 3 SCC 21
\(^{14}\) (1972) 3 SCC 799 AIR 1972 SC 1121
\(^{15}\) Citing Amir Begum v Badrudin Hussain, AIR 1914 PC 105
\(^{16}\) Bharat Overseas Construction(P)Ltd v University Teachers Coop Housing Society Ltd, AIR 1991
That part of the award was severable without affecting the other portion of the award. There was no bar to passing of successive decrees. The court had power to pronounce judgment on that portion of the award which was admitted and was severable\textsuperscript{17}.

**Time for making award**

Under the preceding enactments there was a rigid time schedule. Four months was the outside limit within which the arbitrators had to make their award. The court could, if it thought fit, extend the time under Section 28 of 1940 Act [repealed]\textsuperscript{18}.

The period of four months was to be counted from the day on which the arbitrator entered upon reference or was called upon to do so. Thus the time for commencement of the proceedings was important and even now continues to be so.

The Arbitration and Conciliation Act, 1996 tries to solve the earlier complications as to time and the time-consuming and expensive methods of managing extension of time. The method adopted by the new Act is to eliminate all statutory prescriptions about time. Since the Act is trying to make the process of arbitration a regime of self-regulation for the parties, the time factor also seems to have been left to the parties. There is no mention whatsoever of time in the new Act. The only provision that is there is about the commencement of arbitral proceedings, section 21 says unless otherwise

\textsuperscript{17} These principles would remain even when the award is directly enforceable as a decree.
\textsuperscript{18} Mohanlal Dungamal Futnani v Vishanji Dungamal Futnani, AIR 2001 Cal 122
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. The only purpose for which this concept of commencement is then used by the Act is the application of the periods of limitation under Section 43 about some of the arbitration matters.

**Res Judicata**

An award does not have the effect of res judicata in respect of persons who were not parties to the arbitration proceedings. A decision on objections to an award has the effect of res judicata in respect of the objecting party.

**Questioning decree at execution stage**

A questions about legal misconduct of an arbitrator was not allowed to be raised in execution proceedings. Questions can be raised at that stage only as to execution, discharge or satisfaction of the decree. A questions as to the manner in which the arbitrator conducted the proceedings could not be raised at the execution stage.

**Award not decree for insolvency purposes**

An arbitration award has been held to be not a decree for purposes of S. 9(2) of the Presidency Towns Insolvency Act, 1909, though it is enforceable as a decree under S. 36 of A & CA, 1996. A petitioner under the Insolvency Act cannot say that an award which he obtained and which remained unpaid constituted an act of insolvency on the part of the award debtor.

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19. Bhai Hospital Trust v Dr Parvinder Singh, AIR 2002 Del 311
20. Subhash & Co v DDA AIR 2000 Del, 423
A Division Bench decision of the same High Court (to the contrary effect) held that an awarded can issue a notice of insolvency. The award is a valid foundation for this purpose. The court said that no difference can be seen in the decree of a court and the award of an arbitrator which has been given the effect of a decree under the A & CA, 1996\(^{23}\).

An application for adjudication as an insolvent was filed against a person who did not pay the award money. The court granted him 35 day’s time either to pay up or seek setting aside. He did not comply with the order one way or the other. His adjudication as an insolvent was held to be justified\(^{24}\).

**Majority decisions**

Any decisions of the arbitral tribunal consisting of more than one arbitrator\(^{25}\) must be made a majority of all its members\(^{26}\) unless otherwise agreed upon by the parties.

**Settlement of a dispute**

An arbitral tribunal may encourage the settlement of a dispute and, with the agreement of the parties, use mediation, conciliation or such other procedure at any point of time during the proceedings\(^{27}\). If during the proceedings the parties settle the dispute, the tribunal should terminate the proceedings. The settlement should be recorded in the form of an arbitral award of agreed terms\(^{28}\).

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23. Dhirendra Bhanu Sanghvi v ICDS Ltd. [2003] 4 RAJ 12 (Bom DB)
25. Under the Arbitration and conciliation Act 1996 s 10(1).
26. Arbitration and conciliation Act 1996 s 29(1)
27. Arbitration and conciliation Act 1996 s 30(1)
28. Arbitration and conciliation Act 1996 s 30(2)
An arbitral award on agreed terms must be made in accordance with the statutory provisions and must state that it is an arbitral award. Such an award has the same status and effect as any other arbitral award on the substance of the dispute.

**Form and contents of award**

An arbitral award should be in writing and signed by the members of the tribunal. In arbitral proceedings with more than one arbitration, the signatures of the majority of the tribunal are sufficient with reasons for any omitted signatures. An arbitral award must be reasoned unless the parties agree to the contrary or the award is an arbitral award on agreed terms. An arbitral award should state the date and place of arbitration. A signed copy of the award must be delivered to each party.

An award for the payment of money, unless otherwise agreed to by the parties, may include in the sum of the award, interest payable at a reasonable rate for the period between the date on which the cause of action arose and the date on which the date on which the award is made. A sum directed to be paid by an award carries interest at rate of 18 percent per annum, from the date of the award to the date of payment, unless the award directs otherwise.
The costs of the arbitration must be fixed by the arbitral award and the tribunal must specify:

(1) the party entitled to cost;
(2) the party who must pay the cost;
(3) the amount of costs or method of determining that amount; and
(4) the manner in which the cost should be paid\(^{39}\).

The arbitral tribunal may, at any time during the arbitral proceedings, make an interim arbitral award on any matter with respect to which it may make a final arbitral\(^{40}\).

**ARBITRATION ACT 1940**

**Award defined in the 1940 Act**

‘Award’ in the Arbitration Act 1940 means an arbitration award\(^{41}\). An award is the decision or determination rendered upon a controversy by arbitrators or commissioners or other private or extra-judicial deciders submitted to them, and also includes the writing or document embodying such decision\(^{42}\). The award must be the result of a judicial decision\(^{43}\). A decision made in exercise of an absolute discretion is not an award\(^{44}\). An agreement put forward by the parties in accordance with their wishes\(^{45}\), or signed by the parties as their consent\(^{46}\), is an award\(^{47}\).

\(^{39}\) Arbitration and conciliation Act 1996 s 31(8)
\(^{40}\) Arbitration and conciliation Act 1996 s 31(6)
\(^{41}\) Arbitration Act 1940 s 2(b)
\(^{42}\) Black’s Law Dictionary
\(^{43}\) Vadilal Chatrabbuj Gandhi v Thakorelal Chimanlal Munshawa AIR 1954 Bom 121
\(^{44}\) Vadilal Chatrabbuj Gandhi v Thakorelal Chimanlal Munshawa AIR 1954 Bom 121
\(^{45}\) Narbadabai v Natverlal Chunilal Bhalakia AIR 1953 Bom 386
\(^{46}\) Yemnava Shidramappa Anchali v Revanshiddappa Mallappa Byakod AIR 1927 Bom 656
\(^{47}\) Narbadabai v Natverlal Chunilal Bhalakia AIR 1953 Bom 386
However, a document that the parties treat as their own and which the arbitrators merely sign as attesting witnesses is not an award\textsuperscript{48}. If the parties in a suit agree to refer their disputes to the sole arbitration of a judge, extra cursum curiae, the decision of the judge is not an award or a judgment in the suit\textsuperscript{49}. When a reference is made to an association for arbitration, and the rule of the association provide for an appeal to the appeal committee against the award of the arbitrators, an appeal though not contemplated by the 1940 Act-will be permissible, as the parties will be deemed to have agreed to such a provision\textsuperscript{50}.

**Speaking and non-speaking awards**

An award which sets out the reasons for the decision is a speaking or reasoned award\textsuperscript{51}. A speaking or reasoned award discusses or sets out the reasons that led the arbitrator to make the award\textsuperscript{52}. An arbitrator is not obliged\textsuperscript{53} to give reasons for his award except when he is required to do so by (1) the arbitration agreement; (2) the reference or deed of submission; (3) an order made by the court\textsuperscript{54}; or (4) the statute governing the arbitration\textsuperscript{55}. A detailed judgment need not be given in a reasoned award\textsuperscript{56}.

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48. Rudragouda Venkangouda Patil v Basangouda Danappagouda Patil AIR 1938 Bom 257  \\
49. Arati Paul v The Registrar, Original Side, Calcutta High Court AIR 1969 SC 1133  \\
50. Fazalally Jivaji Raja v Khimji Poonji & Co AIR 1934 Bom 476.  \\
51. Jajodia (Overseas) Pvt Ltd v Industrial Development Corpn of Orissa (1993) 2 SCC 106  \\
52. Jajodia (Overseas) Pvt Ltd v Industrial Development Corpn of Orissa (1993) 2 SCC 106  \\
53. Indian Oil Corp of Indian Carbon Ltd AIR 1988 SC 1340,  \\
54. Arbitration Act 1940 s 20  \\
55. Raipur Development Authority v Chokhamal Contractors AIR 1990 SC 1426  \\
56. G D Rathi steels Pvt Ltd v Delhi Development Authority AIR 1992 Del 343 \\
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Lump sum award

Where there is more than one claim an arbitrator need not give separate award for each claim, and can give a lump sum award\(^{57}\).

Successive Awards

An arbitrator may make successive awards in respect in respect of the matters in dispute, if this can be so inferred from the agreement or the subsequent conduct of the parties\(^ {58}\). In such a case he is not bound to wait for the decision of all the disputed matters before he makes his final award, and the successive award made by him are binding and can be filed in a court under the provisions of the code of civil procedure 1908\(^ {59}\). The arbitrator can make separate awards for separate submissions arising out of the same contract\(^ {60}\). Where the first award, not deciding some of the matters, states that there will be a supplementary award, and in pursuance of this reservation a second award is given, the two awards taken together make the complete award\(^ {61}\); and he arbitrator cannot be said to be functus officio\(^ {62}\) at the time of the second award\(^ {63}\).

Compromise award

An award embodying a compromise between the parties before an arbitrator is a valid award\(^ {64}\). An award that approves an arrangement put forward by the parties is also a valid award\(^ {65}\).

\(^{57}\) Firm Madanlal Roshanlal Mahajan v Hukumchand Mills Ltd AIR 1967 SC 1030

\(^{58}\) Nanak Chand v Banarasi Das AIR 1930 Lab 425

\(^{59}\) Baranagore Jute Factory Co Ltd v Hulaschand Rupchand AIR 1958 Cal 490;

\(^{60}\) Gulzarilal Kanoria & Co v Busi & Stephenson Ltd AIR 1953 Cal 621

\(^{61}\) Mukundalal Pakrashi v Parkash Chandra Pakrashi AIR 1939 Cal 739

\(^{62}\) Black’s Law Dictionary (6th Edn, Reprint, 1997)

\(^{63}\) Mukundalal Pakrashi v Parkash Chandra Pakrashi AIR 1939 Cal 739

\(^{64}\) Dulan Bai v Sundersao AIR 1938 Nag 132 at 133,

\(^{65}\) Gobardhan Das v Jaikishen Das (1990) ILR 22 All 224;
An award is not open to an objection that it merely reproduces an agreement reached between the parties where the consent of the parties is regarded by the arbitrator as evidence for the proposed settlement being fair to all. If a compromise is disputed, and the arbitrator finds the compromise valid, he can give his award in terms of the compromise. An award based on a compromise will be vitiated if the interest of a minor, who is a party to the reference, has not been properly looked into by his guardian.

**Formal requirements of an award**

An award has to be in writing, and is final when it is signed. The mere writing of an award does not amount to the making of the award, nor is it deferred until it is (1) published or communicated to the parties; (2) delivered to the parties; or (3) filed in court. An oral award is not illegal and can form a valid consideration for a promissory note, cheque or a similar instrument.

Writing one’s name amounts to a signature, and this includes a mark in the case of a person who is unable to write. It is sufficient for a party to sign his name in any party of the document in such a way as to acknowledge that he is a party to it. If a document makes it appear that the person signing it is the...
author, it does not matter what the form of the instrument is, or in what part the
signature occurs. Except where the agreement provides that a unanimous
award alone would be binding, it will be enough if an award is signed by the
arbitrators holding the majority view, provided all the arbitrators are present
throughout the proceedings and take part in the deliberations. An award will
still be valid if the decision is arrived at unanimously although one of the
arbitrators subsequently does not sign the award or even resiles from it or
refuses to sign it. It is not necessary that all the arbitrators should sing the
award at the same time and place or in the presence of each other so long as
the award is arrived at after joint deliberations. If the draft award is signed by
all the arbitrators, the fact that its fair copy is not signed by all of them will not
make the award invalid.

An award must be definite and capable of execution and must decide
the matters referred to arbitration. Some recital are useful to show what in
effect and substance an arbitrator intended to decide. An award need not give
reasons unless they are required to be given under the arbitration agreement or
the order of reference by a court, although it is preferable if brief reasons are
stated indicating the mind of the arbitrator.

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78. Johara Bibi v Mohammad Sadak Thambi Marakayar AIR 1951 Mad 997
79. Ramtaran Das v Adhar Chandra Das AIR 1953 Cal 464
80. Johara Bibi v Mohammad Sadak Thambi Marakayar AIR 1951 Mad 997
81. Mukundalal Pakrashi v Prakash Chandra Pakrashi AIR Cal 739
82. M Nayakan v a Nayakan (1894) ILR 18 Mad 22
83. Mukundalal Pakrashi v Prakash Chandra Pakrashi AIR Cal 739
84. Ramtaran Das v Adhar Chandra Das AIR 1953 Cal 464
85. Kanbaiya LalDubey v Awinash Talwar AIR 1972 All 237
86. Arbitration Act 1940 s 16(1)(b)
87. Arbitration Act 1940 s 16(1)(a)
88. Nachiappa Chettiar v Subramaniam Chettiar AIR 1960 SC 307
89. Raipur Development Authority v Cokhanal Contractors AIR 1990 SC 1426,
90. Indian Oil Corpnl Ltd v Indian Carbon Ltd AIR 1988 SC 1340
However, when a question of arbitrability (that is whether a matter is capable of being arbitrated upon) is raised, an arbitrator has to decide the questions by a speaking or reasoned order.\textsuperscript{91}

An award should be in consonance with equity, fair play, principles of natural justice and established practice and procedure.\textsuperscript{92} Where an arbitrator or umpire states a special case, the court, after giving notice to the parties and hearing them, will pronounce its opinion and such opinion forms a part of the award.\textsuperscript{93} A single award made in respect of several contracts containing the same submission is valid.\textsuperscript{94}

**Construction of award**

An award must be reasonably and fairly made and the court will make every reasonable intendment and presumption in controversy.\textsuperscript{95} The court should be read as a whole and portion cannot be picked out of it to show that the finding of the arbitrator was inconsistent.\textsuperscript{96} Generally, a court will lean towards upholding an award than towards vitiating it.\textsuperscript{97} A court should give the words in an award their ordinary and plain meaning and not interpret them like a decree of a court in which certain words have a precise technical meaning.\textsuperscript{98} In appreciating the effect of the words used in an award given by an arbitrator,

\textsuperscript{91} Tamil Nadu Electricity Board v Bridge Tunnel Constructions 1997 AIR SC 1376
\textsuperscript{92} Food Corpn of India v Joginderpal Mohinderpal AIR 1980 SC 1263
\textsuperscript{93} Arbitration Act 1940 ss 13(b), 14(3).
\textsuperscript{94} The Grahams Trading Co (India) Ltd v Chandulal Parmanand AIR 1935 Sing 228 at 231.
\textsuperscript{95} Kotumal v Jeyramdas AIR 1928 Sind 144 at 142
\textsuperscript{96} Union of India v Jay Narain Misra AIR 1970 SC 754
\textsuperscript{97} Nachiappa Chettiar v Subramaniam Chettiar AIR 1960 SC 307
\textsuperscript{98} Durga Prosad Chamria v Anardeyi Sethani AIR 1947 Cal 75
the court must bear in mind that the arbitrator is a layman, not familiar with the technical significance of legal expressions, and must, therefore, read the relevant clauses as a whole with a view to determine what, in effect and substance, he intended to decide. An award cannot be interpreted, varied or contradicted by extrinsic evidence. It is not permissible for a court to send for an umpire or an arbitrator and examine him, even if there is ambiguity as he is a functions officio after the award is published.

**Effect of an award**

An award, whether oral or written, is equivalent to a final judgment and is binding upon the parties, whether it has been incorporated into a decree or not. It is not essential for the validity of an award for the parties to signify their consent to it before it is enforced. Strangers to an arbitration agreement will not bound by the award in the absence of an agreement to contrary, but an award is admissible in evidence even against persons who are not parties to the arbitration proceeding. A valid award operates to merge and extinguish all claims made in the submission, and determining the rights of the parties, and constitutes a bar to any action on the original demand. A second reference or award in the same matter cannot be made unless the arbitration agreement so provides.

99. Mnakshisundaram Chettelambal Ammal AIR 1944 Mad 423
100. Nachiappa Chettiar v Jamnadas Harprasad AIR 1924 Sind 51 at 54
102. Amir Bibi v Arokiam AIR Mad 1113 at 1113.
103. Swamirao Konher Nadgur v Channappa Uppina Hubli AIR 1927 Bom 237
105. Peyare Lal v Misri AIR 1940 All 453 at 454.
In the case of an award in respect of the subject matter of a pending suit made on a reference without an order of the court, the award can be enforced only as a compromise or adjustment of the suit with the consent of the parties\(^{110}\). An award like a decree speaks from its date, and the rights of the respective parties come into existence with the award\(^{111}\). An award made out of court becomes effective from the date when it is made, and not from the date when the court orders it to be filed\(^{112}\), and a suit may be filed thereon\(^{113}\). Once an award has been given, the arbitrator becomes functus officio\(^{114}\).

**Stamp duty**

Stamp duty is payable on awards\(^{115}\). Awards made on references in pending suits, except in suits for partition, are exempted from payment of stamp duty\(^ {116}\). An award must be stamped at the time of execution. If an award is executed on an unstamped paper, it can be admitted in evidence on payment of the duty\(^{117}\). If an award is written on an unstamped or insufficiently stamped paper, it is liable to be impounded, and can be validated with retrospective effect on the payment of the necessary duty and penalty\(^{118}\). An unstamped award may be sent to the collector for realization of the duty and penalty, and submitted in court\(^{119}\).

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111. Sudhir Kumar Saha v JN Chemicals Pvt. Ltd. AIR 1985 Cal 454
112. Laldas v Bhai Lal 11 Bom LR 20; Karmusing nanusing v Smt ambiabi AIR 1937 Sind 7 at 7
115. Indian Stamp Act 1899 Sch 1 art 12.
116. Indian Stamp Act 1899 Sch 1 art 45.
118. India Stamp Act 1899 s 33
119. Hindusthan Steel Ltd v Dilip Construction Co AIR 1969 SC 1238
After an award has been duly stamped and registered and filed in court, it cannot be remitted to the arbitrator for resubmission\textsuperscript{120}.

**Registration**

Registration of an award is compulsory if it deals with immovable property of the value of Rs 100 or above, unless it is delivered in a reference made by a court\textsuperscript{121}. A non-registered document clearly falling within the provisions of the registration Act 1908 requiring it to be registered is admissible in evidence\textsuperscript{122}. The subsequent registration of an award is irrelevant when it has not been registered at the relevant time\textsuperscript{123}.

Registration of an award is necessary only if a right is claimed under the award and is sought to be enforced by way of a suit or by way of defence\textsuperscript{124}. An award creating a charge on immovable property for payment of money will require registration\textsuperscript{125}. Where an award merely confirms distribution of assets between parties in a manner already agreed to, no new right is created in respect of the immovable property and the award is not required to be registered\textsuperscript{126}. An award which does not create a right, title or interest in immovable property but merely directs some documents to be executed, creating a right in some person, is not compulsorily remittable\textsuperscript{127}.

\begin{itemize}
\item \textsuperscript{120} Rikhahdass v Ballabhdas AIR 1962 SC 551.
\item \textsuperscript{121} Satish Kumar v Surinder Kumar AIR 1970 SC 833
\item \textsuperscript{122} Registration Act 1908 s 17(1)(b)
\item \textsuperscript{123} Lachhman Dass v Ramal AIR 1989 SC 1923.
\item \textsuperscript{124} Akbar Ali v Muniraz Hussain AIR 1987 Bom 39
\item \textsuperscript{125} Pandit Shiva Rao v D A Shannugasundarswami AIR 1992 Mad 115
\item \textsuperscript{126} M Parasmull Charida v Mahendra Dadha AIR 1992 Mad 115.
\item \textsuperscript{127} Tehmi P Sidhwa v Shibu Banerjee & Sons Pvt Ltd AIR 1974 SC 1912
\end{itemize}
An award merely recording the existing factual position of the parties with reference to immovable property, and not changing the existing position, does not require registration\textsuperscript{128}.

A decree passed on the basis of an award that is compulsorily registrable is a nullity\textsuperscript{129}. There is no right of suit for the avoidance of a decree on the ground that he award which forms the basis of the decree is unregistered\textsuperscript{130}. A party to a decree based on an unregistered award may move the court by way of a review\textsuperscript{131}. If an unregistered award deals with movable and immovable property, effect can be given to he part dealing with the movable property if the portion is severable, or else the entire award is bad\textsuperscript{132}.

An award must be registered within four months of he date of its execution\textsuperscript{133}, by an arbitrator, or an umpire and not by the parties to the arbitration, as they are not the executants of the document\textsuperscript{134}. If an unregistered award is been filed in court, an arbitrator may take the award and present it in court after due registration\textsuperscript{135}.

**JURISDICTION OF COURTS**

**General principles**

The Arbitration and Conciliation Act 1996 specifically excluded judicial intervention except where the Act provides otherwise\textsuperscript{136}.

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128. Mattapalli Chelanguyya v Mattapalli Venkataatnam AIR 1972 SC 1121
129. Uttamchand Motilalji v Wasudeo Deorao Digambar AIR 1946 Nag
130. Sagar Mal v Parsotam Das AIR 1942 ALL 36 at 38;
132. Mattapalli Chelanguyya v Mattapalli Venkatramaan AIR 1972 SC 1121
133. Registration Act 1908 s 23;
134. Kanshi Ram v Harma Das AIR 1940 Lah 73 at 75.
136. Arbitration and Conciliation Act 1996 s 5
\end{flushright}
Where with respect to an arbitration agreement any application under Part 1 of the Act\textsuperscript{137} has been made in a court, that court alone has jurisdiction over the arbitral proceedings, and all subsequent applications arising out of that agreement and the arbitral proceedings must be made in that court and in no other court\textsuperscript{138}.

Under the Arbitration Act 1940, an award may be filed in any court having jurisdiction in the matter to which the reference relates\textsuperscript{139}. All questions regarding the validity, effect or existence of an award or an arbitration agreement will be decided by the court in which the award has been filed\textsuperscript{140}. All applications regarding the conduct of arbitration proceedings\textsuperscript{141} will be decided by the court which has jurisdiction\textsuperscript{142}. In a reference where an application under the Arbitration Act 1940 has been made in a court competent to entertain it, that court alone has jurisdiction over the arbitration proceedings and all subsequent applications arising out of that reference\textsuperscript{143}.

**Court in which award may be filed**

In the Arbitration Act 1940, ‘court’ means a civil court having jurisdiction to decide the questions forming the subject matter of the same had been the subject matter of a suit, but does not include a small causes court except for the purpose of arbitration proceedings on an application by parties

\textsuperscript{137} Arbitration and Conciliation Act 1996 Pt. I
\textsuperscript{138} Arbitration and Conciliation Act 1996 s 42.
\textsuperscript{139} Arbitration Act 1940 s 31(1)
\textsuperscript{140} Arbitration Act 1940 s 31(2)
\textsuperscript{141} Arbitration Act 1940 s 31(3)
\textsuperscript{142} Nand Kishore v Mool Chandra AIR 1966 All 613.
\textsuperscript{143} Arbitration Act 1940 s 31(4)
in a suit for a reference by the court. As the provisions of the Code of Civil Procedure before a court arising out of the 1940 Act, the question of jurisdiction will be decided in accordance with the Code.

The court has jurisdiction to determine a dispute when the land, which is the subject matter of the proceedings or a part thereof, is within its jurisdiction. If the whole immovable property dealt with in the award is situated outside its jurisdiction, the court will have no jurisdiction to file the award. A court in India will have no jurisdiction to file the award dealing with a property situated wholly outside India. If the award deals with property partly in and partly beyond India, the court in India will have jurisdiction to file the award with respect to the properties in India, provided the case permits a separation of the two parts without affecting the basis of the award.

The court within whose local jurisdiction any part of the cause of action arises or the defendant resides, or carries on business, or personally works for gain at the time of the commencement of the proceeding, will also have jurisdiction to entertain the proceeding under the 1940 Act.

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144. Arbitration Act 1940 s 21
145. Arbitration Act 1940 s 41(a)
146. Code of Civil Procedure 1908 ss 16-20
147. Cursetji Jamshedji Ardaseer Wadia v R D Shiralee (Dr) AIR 1940 Bom 32
149. Bai Bachubai v Trived Mohanlal Jatashanker AIR 1953 Sau 163
150. Murali Mal v Sant Ram AIR 1929 Lah 24 at 26
151. Nemi Chand Sowkar v Kesarmal AIR 1929 Mad 31
152. Sripad Baji Gaurware v Dattatraya Garware AIR 1939 Bom 296
153. Hakam Singh v Gammon (India) Ltd. AIR 1971 SC 740
154. Ram Rattan Bhartia v Food Corpn of Indian AIR 1978 Del 183
Where more than one court has jurisdiction, proceedings can be filed in any of the courts. An agreement to take a dispute to a particular court where one or more courts have jurisdiction to try the suit, is not contrary to public policy. However, parties cannot confer by agreement jurisdiction on a court which it does not possess under the code of civil procedure 1908. If the arbitrator has been appointed by an appellate court, the award can be validly filed only in that appellate court, particularly where that court has not divested itself of its jurisdiction to deal with the award or the matters arising out of the award. A court will however have jurisdiction to entertain an application to file an award based on a contract entered into outside its jurisdiction if the goods purchased are examined and passed as to quality, weight, condition and admixture within its jurisdiction, or where the property dealt with by the award is within its jurisdiction, even though the parties carry on business beyond its jurisdiction. If payments under a contract are to be made at arbitration, an award relating to disputes arising out of that contract can be filed in courts. Unless there is some legislating prohibiting references, for example in respect of revenue-paying lands, arbitration agreements and awards in respect of them should be filed in civil courts. If an award is filed in a court which has no jurisdiction in the matter, such filing will not fix that court permanently as the court in which all subsequent applications may be filed.

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155. Jethanand Pitamberdas v Mirabai AIR 1942 Sind 79
156. Hakam Singh v Gammon (India) Ltd AIR 1971 SC 740
158. B Upendra Nath Basu v Het Lal AIR 1933 All 380,
160. Virendra Saigal v Sumatilal Hamnalal AIR 1970 Del 14
The statutory provisions of the 1940 Act vest exclusive jurisdiction in the court in which an application for the filing of an award has been first made\textsuperscript{161}.

Were an application is made before a high court for a stay\textsuperscript{162}, an application for filing the arbitration agreement in court\textsuperscript{163} can be made before a subordinate judge of another court\textsuperscript{164}. If an application for leave to revoke the authority of the arbitrator is moved before a civil judge, and later if the award is filed in a high court, the high court has no jurisdiction to proceed in the matter\textsuperscript{165}. When two courts have jurisdiction over a subject matter and an application for setting aside the award is filed in one court, a subsequent application made in the other court for filing the award is incompetent\textsuperscript{166}.

Where an application under the 1940 Act\textsuperscript{167} is made for the removal of the arbitrator and for the appointment of a new arbitrator in one court and a subsequent application by the other party of extension of time\textsuperscript{168} is made in another court the other court has no jurisdiction to entertain the application\textsuperscript{169}. When an application is made in one court for the same purpose is made in another court under the statutory provisions the subsequent application is not maintainable\textsuperscript{170}.

When a reference is made by a court whether or not in a pending suit, under the 1940 ACT\textsuperscript{171}, the court making the reference has complete control.

\textsuperscript{161.} Arbitration Act 1940 s 14  
\textsuperscript{162.} Arbitration Act 1940 s 34  
\textsuperscript{163.} Arbitration Act 1940 s 20  
\textsuperscript{164.} Union of Indian v Surjeet Singh AIR 1970 SC 189  
\textsuperscript{165.} Ferro Alloys Corpn v Great Eastern Shipping Co Ltd 1988 Mah LJ 472  
\textsuperscript{166.} Arbitration Act 1940 ss 8  
\textsuperscript{167.} Arbitration Act 1940 s 28  
\textsuperscript{168.} Nanu Ram Goyal Engineer and Contractor v Haryana State AIR 1990 P & H 87  
\textsuperscript{169.} Globe Paper Mills Ltd v Printpak Machinery Ltd AIR 1985 Cal 52  
\textsuperscript{170.} Arbitration Act 1940 s 20  
\textsuperscript{171.} Shukrullah v Rahmat Bibi AIR 1947 All 304
over the arbitration proceedings and all applications will have to be filed in that court\textsuperscript{172}.

Where the appellate court has appointed the arbitrator to make an award it is that court in which the award can be validly filed. This is particularly so when the appointed court had not divested itself of its jurisdiction to deal with the award or the matters arising out of the award\textsuperscript{173}. When an application for filing an award\textsuperscript{174} is moved before a subordinate judge, but the award is filed in the high court, the high court, the high court has no jurisdiction to proceed in the matter\textsuperscript{175}.

No distinction is to be made in this respect between the filing of an award by a party and be filing of the award by an arbitrator, and it cannot be said that another court may have jurisdiction if the award is to be filed by an arbitrator\textsuperscript{176}. Where an application\textsuperscript{177} for filing the award is made by one party before one court and a subsequent application by the other party of filing the same award is made in another court, only one court will have jurisdiction as jurisdiction of all other courts is ousted by the 1940 Act\textsuperscript{178}.

Where there are two arbitration agreements, and proceedings under the 1940 Act challenging an award\textsuperscript{179} have been started in on court and an award in pursuance of the second agreement is filed in another court, the jurisdiction of the second court will not be barred.

\textsuperscript{172} State of Madhya Pradesh v Saith & Skelton (P) Ltd AIR 1972 SC 1507
\textsuperscript{173} Arbitration Act 1940 s 14
\textsuperscript{174} Kumbha Mawji v Dominion of India (now the Union of India) AIR 1953 SC 313
\textsuperscript{175} Ferro Alloys Corpn v A K Ghosh AIR 1960 Cal 421
\textsuperscript{176} Arbitration Act 1940 s 14(2)
\textsuperscript{177} Arbitration Act 1940 s 31(4)
\textsuperscript{178} Arbitration Act 1940 s 33
\textsuperscript{179} Nalanda Ceramic and Industries Ltd v N Chowdury & Co (P) Ltd. AIR 1977 SC 2142
Plea of res judicata on question of jurisdiction

If a finding has been recorded in litigation inter parties that a particular court does not have jurisdiction to entertain a suit in respect of a matter which is also the subject matter of a reference or an application in a reference, that finding will operate as res judicata and bar the jurisdiction of that court to entertain an application for filing the award under the Arbitration Act 1940180.

JUDICIAL SCRUTINY OF AWARD

Application challenging award

The Arbitration and Conciliation Act 1966 allows recourse to the court against an arbitral award only by an application to set aside the award181.

Under the Arbitration Act 1940, after an award has been filed, a party can make an application182 to bring any defect in it to the notice of the court and the court will give such relief as it thinks fit183. An application for setting aside an award can be moved only when the award has been filed in court184.

Court’s powers in an application challenging award

The court may modify or correct the award(1) where a part of the award is upon a matter not referred to arbitration and such part if separated does not affect the decision on the matter referred185; Or(2) where the award is imperfect in form, or contains any obvious error which can be amended without affecting the decision186;

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180. Arbitration Act 1940 s 31(4)
181. Arbitration and Conciliation Act 1996 s 34
182. Arbitration Act 1940 s 33
183. L Madan Lal Haveliwala v L Sunder Lal AIR 1964 All 38
185. Arbitration Act 1940 s 15(a)
186. Arbitration Act 1940 s 15(b)
or (3) where the award contains a clerical mistake or an error arising from an accidental slip or omission. The court may also remit an award or any matter referred for arbitration for reconsideration upon such terms as it thinks fit: (a) where the award has left undetermined any of the matters or where it determines any matter not referred to arbitration and such matter cannot be separated without affecting the determination of the matter referred; (b) where the award is indefinite and incapable of execution; or (c) where an objection to the legality of the award is apparent on the face of it.

A court may set aside an award on specific grounds. It may set aside an award and leave it to the parties to have recourse to arbitration in case the arbitration agreement survives or may remit the award for reconsideration.

Imperfection or error in award

An imperfection in form or error must be one existing at the time of the filing or the award and not one that comes into existence at a subsequent stage on the happening of an unanticipated event. An unregistered award is not an ‘imperfect’ award.

187. Arbitration Act 1940 s 15(c)
188. Arbitration Act 1940 s 16(1)(a)
189. Arbitration Act 1940 s 16(1)(b)
190. Arbitration Act 1940 s 16(1)(c)
191. Arbitration Act 1940 s 30
192. Union of India v Pampassar Distillery AIR 1981 Del 399
193. J Kaikabad v F Khambatta AIR 1930 Lah 26 at 31
194. Ashok Kshyap (Capt) v Sudha Vasisht AIR 1987 SC 841
Award on matters not referred

If an arbitrator includes in his award a matter which was not refereed to arbitration and such matter cannot be separated without affecting the award, it may be remitted to the arbitration for reconsideration, where such part can be separated, the decision on the matters referred stands and the court can order the rest of the award to be ignored\(^1\). The portion of an award that goes beyond the terms of the reference is to that extent ultra vires\(^2\) and void and the remainder of the award if good can maintained\(^3\). Unless shown otherwise the court will presume that an arbitrator has determined only those matters that were referred to him, and the burden of proving that the arbitrator has awarded on matters not within the submission lies upon the party who seeks to impeach the award\(^4\). However, where an arbitrator deals with a matter not covered by the arbitration agreement at he invitation of the parties the award can either be modified or remitted\(^5\).

Obvious error in award

If an award sets forth a proposition of law which is erroneous, then the award is liable to be set aside\(^6\). An obvious slip is no ground for setting aside or remitting an award\(^7\). Arithmetical miscalculation arising out of slips can be corrected by modifying an award\(^8\). The power to modify and correct an award can be exercised even after a decree is passed in terms of the award\(^9\).

\(^{195}\) Nilmoni Pal v Dakshineswar Pal AIR 1932 Cal 713
\(^{196}\) Mohd Muntaz Ali v Farhat Ali Khan (1901) ILR 23 All 394 PC
\(^{197}\) Metro Electric Co, New Delhi v Delhi Development Authority, New Delhi AIR 1976 Del 195
\(^{198}\) Vishindas Khushaldas v tejumal Khushaldas AIR 1938 Sind 59 at 62
\(^{199}\) Waverly fute Mills Co ltd v Raymon & Co (India) Pvt Ltd AIR 1963 SC 90
\(^{200}\) Arbitration Act 1940 s 30
\(^{201}\) Union of India v Jai Narain Misra AIR 1970 Sc 753
\(^{202}\) K Hyder Saheb v N Giri Chettiar (1913) 19 IC 496
\(^{203}\) Mohammad Muntaz Ali Khan v Syed Mohammad Saadat Ali KhanAIR 1932 Oudh 293
An executing court cannot assume jurisdiction and alter a decree passed on the basis of a compromise. After a award has been made a rule of the court, the court executing the decree cannot grant any further relief. The period of limitation for objections against an award does not apply to an application for modification of an award. When an award is modified under the Arbitration Act 1940 the decree should be in accordance with the modified and not the original award. An appeal will lie against an order modifying or correcting an award but the decree on such award is not appealable.

**Remitting the award**

The power to remit an award for reconsideration of arbitrator is a discretionary power of the court. While remitting an award the court should not lay down the law. If circumstances produce a bias in the mind of an arbitrator, the court will in its discretion refuse to remit the award to the arbitrator. An appellate court cannot question the exercise of this discretion unless it has been misused. A court has no power to remit an award which is a nullity. If an error of law appears on the face of the award it is a valid ground for remitting the award to the arbitrator for a decision on merits. An award may be remitted even after it is set aside.

204. Har Prasad v Raghupat Dayal AIR 1924 All 62
205. Gangaram Khemsingh v Ali Mohamed Khairdin AIR 1935 Sd 140
207. Arbitration Act 1940 s 15
208. Arbitration Act 1940 s 39(1)(iii)
209. K Hyder Saheb v N Giril Chettiar (1913) 19 IC 496.
210. Arbitration Act 1940 s 16
211. Dutton Massey & Co v Jamanadas Harpards AIR 1924 Sind 51
212. Mahomedali Kharinji & Sons v Chandfatsing Budsing AIR 1925 Sind 51
214. Bapuji Dhanaji Thakare v Gunpatrao Anyaji AIR 1961
215. Mohanlal v State of Madhya Pradesh AIR 1980 MP 1
216. Union of India, Delhi v Pampassar Distillery, Bellary AIR 1981 Del 399
It is not necessary to remit an award in whole: even portions of an award can be remitted\(^{217}\). When a court decides to remit an award it is not final and can be altered by the arbitrator\(^{218}\). An award must be remitted to the same arbitrator or umpire who delivered the award, especially when it I objected to on legal and moral grounds\(^{219}\). If an arbitrator is guilty of misconduct only in a technical sense, which means the arbitrator while giving the award was not motivated by ill will or dishonesty, and the circumstances being such that the court may still trust him, the award may be remitted and not set aside\(^{220}\).

**Award indefinite and incapable of execution**

An award ought to be certain, so that no reasonable doubt can arise upon the face of it as to the arbitrator’s meaning or as to the nature and extent of duties imposed by it on the parties\(^{221}\). An award is not indefinite and incapable of execution if some expression in it is capable of more than one interpretation\(^{222}\). An award is not incapable of execution if the executing court has to make inquiries into various circumstances before determining the entitlement of each party\(^{223}\). If an award is uncertain upon a point about which there is no controversy between the parties, it is not bad\(^{224}\). Where an arbitrator lays down principles or gives rules by which the actual result can be worked out, the award is sufficiently certain\(^{225}\).

\(^{217}\) Mehta Teja Singh & Co v Fertilizer Corpn of India Ltd AIR 1968 Del 188
\(^{218}\) Tulsi Ram v Basdeo AIR 1926 All 567 at 570
\(^{219}\) Sheo Pd Bungshidhur v Ram Chander Hanibus (1914) 14 Cal 313
\(^{220}\) Union of India representing Northern Railway v J P Sharma & Sons AIR 1968 Raj 99
\(^{221}\) Lal Jagroop Singh v Banktaishwar Rawan Bahadurpal Singh AIR 1916 Oudh 160
\(^{222}\) Ragburaj Bahadur Singh v Rajeshwar Bali AIR 1916 Oudh 226
\(^{223}\) Mian Nathu v Abdul Ghai Air 1930 Lah 22 at 23
\(^{224}\) Vishindas Khushaldas v Tejumal Khushaldas Air 1938 sind 59 at 62.
\(^{225}\) Nanakchand v Benarsida AIR 1939 Lhas 425.
Error of law

An award is liable to be remitted if it is based on an opinion given by the court which is erroneous\textsuperscript{226}. An order of the court remitting an award to the arbitrator for resubmission after it is duly stamped and registered is not remitted for reconsideration\textsuperscript{227}.

Proceeding after remission

Where an award is remitted according to the statutory provisions\textsuperscript{228}, the time within which the arbitrator must submit his decision to the court will be fixed by the court\textsuperscript{229}. Where no time is specified in the order and the parties as well as the umpire overlook this fact and the award is not filed within the time allowed\textsuperscript{230}, the court must extend the time even after the award is made\textsuperscript{231}. Even if the court did not fix the time for passing the award at the time of making order remitting the award it can do so subsequently\textsuperscript{232}. An award remitted will become void on the failure of the arbitrator to reconsider it and submit his decision within the time fixed\textsuperscript{233}. An arbitrator has a duty to hear such evidence as the parties may wish to produce\textsuperscript{234}. The parties by their conduct can waive their right to lead evidence\textsuperscript{235}. The award becomes void without proof of corruption or misconduct\textsuperscript{236}.

\textsuperscript{226} British Westinghouse Electric and Manufacturing Co Ltd v Underground Electric Railways Co of London Ltd [1912] AC 673, HL.
\textsuperscript{227} Ashok Kashyap (Captain) v Sudha Vashisht AIR 1987 SC 841.
\textsuperscript{228} Arbitration Act 1940 s 16(2)
\textsuperscript{229} Arbitration Act 1940 s 16(2)
\textsuperscript{230} Arbitration Act 1940 Sch 1
\textsuperscript{231} G Martirosi v A K C T Subramaniam Chettiar AIR 1928 Mad 69
\textsuperscript{232} State of Madhya Pradesh v Vijay Kan Kariya 1988 MP LJ 60.
\textsuperscript{233} Arbitration Act 1940 s 16(3)
\textsuperscript{234} Sujan Rai v Jhabbu 1893 AWN 45
\textsuperscript{235} Union of India v J P Sharma AIR 1982 Raj 245
\textsuperscript{236} Mohun Kishen v Bhoobun Shyam (1867) 7 Suth WR 406
When an award becomes void, the court will try the case itself, if reference is made in a suit. The time can be enlarged even after the expiry of the time fixed earlier. When after the award is remitted an arbitrator reconsiders a matter to the best of his ability and come to the same conclusion, the award will not be void. Where the request of a party is to set aside the award, the court has power to remit the award to cure the defect upon which the motion to set aside is based.

**Procedural aspects**

If the court proceeds with the suit after the award becomes void and passes a decree and an appeal is filed against it, the order remitting the award may then be challenged in the appeal but if the arbitrator reconsiders his previous award, a decree passed in terms of the fresh award becomes non appealable and as such the order remitting the award becomes final.

However, if objections are filed against the second award, the order remitting the first award may be challenged in an appeal against the order setting aside or refusing to set aside the award. An appeal will lie where the court, after rejecting a application for setting aside an award, remits a part of it which is severable from the rest.

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238. Ganpatrai & Sons v Ramgopal anda Kishore AIR 1955 Cal 302
239. Lalta Devi v Baldeo Sahai 1881 AWN 25(26)
240. Re Crompton & Co v Mohan Lal (1913) ILR 41 Cal 313.
241. George v Vastian Soury (1898) ILR 22 Mad 202
242. Subbiah Lyer v Subramania Ayyar (1908) ILR 31 Mad 479
243. Vengu Ayyar v Yegram Ayyar AIR 1951 Mad 414
244. Duryodhan v Exe Engineer AIR 1984 Ori 217.
However, where on an application for setting aside, the court does not adopt the award, but remits it for fresh determination by the arbitrator, no appeal lies\textsuperscript{245}. If the court remits as award on any ground other than the specified statutory grounds for setting aside a revised award; and on this view an appeal from the decree based on the revised award would be competent\textsuperscript{246}. An appellate court will not ordinarily interfere with the discretion of the first court in declining to remit an award, but the appellate court will interfere where no grounds have been shown\textsuperscript{247} or the discretion has been misused\textsuperscript{248}. An order by a court to arbitrators to make an award afresh is equal to refusal to file an award and is not appealable\textsuperscript{249}.

**Recourses against arbitral award : Setting aside the award**

Under the Arbitration and Conciliation Act 1996, the only recourse to a court against an arbitral award is by an application for setting aside the award\textsuperscript{250}. The court may set aside an arbitral award only on specified grounds:

1. if the party making the application furnishes proof that:
   1. a party was under some incapacity; or
   2. the arbitration agreement is not valid under the law to which the parties have subjected to or, failing any indication as to that, under the law for the time being in force; or

\textsuperscript{245. State of West Bengal v Dilip Kr Saha AIR 1983 Cal 213.  
246. Union of India v K L Bhalla AIR 1977 Del 82  
247. Louis Dreyfus & Co v R K Rajagopala Aiyar & Bros AIR 1923 Mad 222  
249. Saya Pye v Kundinnya AIR 1924 Rang 47.  
250. Arbitration and Conciliation Act 1996 s 34(1)
(c) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceeding or was otherwise unable to present his case; or

(d) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration; or

(e) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of Part I of the 1996 Act from which the parties cannot derogate, or, failing such agreement, was not in accordance with part; or

(2) if the court finds that:

(a) the subject matter of the dispute is not capable of settlement by arbitration under the law for the time being in force; or

(b) the arbitral award is in conflict with the public policy of India.

An application for setting aside an arbitration award must be made before three months have elapsed from the date on which the party making the application had received the award or, if a request had been made for correcting or interpreting the award, from the date on which that request had been disposed of by the arbitral tribunal. If the court is satisfied that the applicant was prevented by sufficient cause from making the application

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251. Arbitration and Conciliation Act 1996 s 34(2)(1)(iv) proviso
252. Arbitration and Conciliation Act 1996 Pt I (ss 2-43)
255. Arbitration and Conciliation Act 1996 s 33
256. Arbitration and Conciliation Act 1996 s 34(3)
within this period, it may entertain the application within a further period of 30
days, but not thereafter\textsuperscript{257}. Where it is appropriate and it is so requested y a
party, the court, on receipt of an application to it aside an award, may adjourn
the proceedings for a period of time determined by it in order to give the
proviso Arbitral tribunal’s opinion will eliminate the grounds for setting aside
the award\textsuperscript{258}.

### Setting aside award under the Arbitration Act 1940 : general principals

Under the Arbitral Act 1940 an award cannot b set aside except on one
or more of three specified grounds. These grounds are exhaustive and an
award can be interfered with on no other grounds\textsuperscript{259}. The ground are :

(1) that an arbitrator or umpire has misconducted himself or the
proceedings;

(2) that an award has been made after the issued of an order by the court
superseding the arbitration or after the arbitration proceedings have
become invalid\textsuperscript{260};

(3) that an award has been improperly procured or is otherwise
invalid\textsuperscript{261}. The arbitrator is the final arbiter of the dispute between the
parties and the award is not open to challenge on the ground that the
arbitrator has reached a wrong conclusion or has failed to appreciate
facts\textsuperscript{262}.

\textsuperscript{257.} Arbitration and Conciliation Act 1996 s 34(3)
\textsuperscript{258.} Arbitration and Conciliation Act 1996 s 34(4)
\textsuperscript{259.} Mehta Teja Singh & Co v Fertilizer Corp of India Ltd AIR 1968 Del 188
\textsuperscript{260.} Arbitration Act 1940 s 35.
\textsuperscript{261.} Arbitration Act 1940 s 30.
\textsuperscript{262.} Hindustan Tea Co v K Shashikant Co AIR 1987 SC 81
The court has no jurisdiction to sit in appeal and examine the correctness of the award on merits with reference to the materials produced before the arbitrator, by re-examining and re-assessing the materials\textsuperscript{263}. Unless there is an error, apparent on the face of the record, which makes it unsustainable\textsuperscript{264}. Where the principles have been correctly laid down by the arbitrator the award cannot be challenged on the ground of wrong application of those principles\textsuperscript{265}. Where a question of law is involved and the arbitrator in compliance with the principles of natural justice arrives at a possible view, the award is not open to interference\textsuperscript{266}.

The Indian Evidence Act 1872 is not applicable to arbitration proceedings. The arbitrator has to follow the principles of natural justice while conducting the arbitration proceedings. It is not for the court to decide whether the evidence before the arbitrator was improper, inadmissible or inadequate. During arbitration proceedings, the arbitrator is the sole judge of the law and of the fact. If the arbitrator takes a decision on the basis of the evidence on record and allows the claim, his award cannot be challenged on the grounds of inadequacy, inadmissibility or impropriety of evidence, particularly when both the parties have full opportunity to argue their respective cases and adduce evidence. The total absence of evidence or the arbitrator’s failure to take into consideration a very material document on

\footnotesize{263. Puri Construction Pvt Ltd v Union of India AIR 1989 SC 777,
264. Union of India v A L Rallia Ram AIR 1963 SC 1685,
266. Uttar Pradesh Hotels v Uttar Pradesh State Electricity Board AIR 1989 SC 268,}
record, or admission of parties, in arriving at a finding are however, good grounds for challenging the proceedings on the grounds of legal misconduct by the arbitrator\textsuperscript{267}.

An award can be challenged on the ground of non-application of mind, such as when it awards more than the total amount claimed\textsuperscript{268}. But the court cannot amend an award and substitute its own decision in lieu of the arbitrator’s decision\textsuperscript{269}. An award is ordinarily not liable to be set aside on the ground that either on facts, or in law, it is erroneous\textsuperscript{270}. It is not open to the court to attempt to probe the mental process by which the arbitrator has reached his conclusion, where it is not disclosed by the terms of his award\textsuperscript{271}. If the dispute is within the scope of the arbitration clause it is not within the jurisdiction of the court to enter into the merits of the dispute\textsuperscript{272}.

**Procedural aspects**

The court has no power to set aside a award on any of the statutory ground\textsuperscript{273}, suo motu, when either no application is made r the application is filed after the period of limitation\textsuperscript{274}; however, the court may exercise suo motu powers to set aside an award which is otherwise patently illegal or void or if the reference itself is invalid and the award is a nullity, even when the

\textsuperscript{267} West Bengal Industrial Infra-structure Development Corp v Star Engineering Co AIR 1987 Cal 126
\textsuperscript{268} Dandasi Sahu v State of Orissa AIR 1990 SC 1128
\textsuperscript{269} All India Intitute of Medical Sciences, New Deli v American Refrigeration Co Ltd AIR 1982 Del 275
\textsuperscript{270} Upper Ganges Valley Electricity Supply Co Ltd v Uttar Pradesh State Electricity Board AIR 1973 SC 683
\textsuperscript{271} Jivarajbhai Ujamshio Sheth v Chintamanrao Balaji AIR 1965 SC 214
\textsuperscript{272} A Mair & Co v Gordhands Sagamal AIR 1951 SC 9
\textsuperscript{273} Arbitration Act 1949 s 30
\textsuperscript{274} Madan Lal v Sunder Lal AIR 1967 SC 1233
grounds are outside the purview of the statutory provision\textsuperscript{275}. There is no special form prescribed for making such an application\textsuperscript{276}, but the application must be filed within 30 days from the date of service of the notice of the making of the award\textsuperscript{277}. A new objection cannot be raised for the first time at the time of hearing if the 360 days period for filing an objection has already expired\textsuperscript{278} or in appeal\textsuperscript{279}. When there is no proof that the notice of filing of the award in court was given to a party, his objection to the award cannot be rejected on the ground of limitation\textsuperscript{280}. Limitation for filing of an objection starts from the date of knowledge of the filing of the award in court\textsuperscript{281}. Delay in filing an application for the setting aside of an award can be condoned if sufficient cause is shown\textsuperscript{282}. The time taken in obtaining a certified copy of the award is to be excluded in computing the period of limitation\textsuperscript{283}.

If the bad part of an award cannot be severed from other provisions, the award should be set aside in its entirety and not in part\textsuperscript{284}. The parties may compromise by altering, amending or adding to the award\textsuperscript{285}. The onus of proving that the award is bad lies upon the persons impugning it\textsuperscript{286}. An arbitrator’s evidence is admissible to show over what subject matter he was

\begin{footnotes}
\item[275] Union of India v Aji Mehta & Associates AIR 1990 Bom 45
\item[276] Madan Lal v Sunder Lal AIR 1967 SC 1233
\item[277] Limitation Act 1963 art 119(b)
\item[278] Haji Ebrahim Kassam Cochinwalla v Northern Indian Oil Industries Ltd AIR 1951
\item[279] Madan Lal V Nahi Bakhab AIR 1947 Lah 177
\item[280] Dewan Singh v Champa Singh AIR 1970 SC 967
\item[281] Devandas Kishnani v Nanikkram Kishnani AIR 1993 Bom 76
\item[282] Limitation Act 1963 s 5;
\item[283] Nanalal m Varna & Co Ltd v Alexandra Jute Mills Ltd AIR 1989 Cal 6
\item[284] Jivarajbhai Ujamshi Sheth v Chintamanrao Balaji AIR 1965 SC 214
\item[285] Attar Singh v Bishan Ingh AIR 1945 Pesh 41 at 42
\item[286] State of Kerala v T A Thomas AIR 1973 Ker 262
\end{footnotes}
exercising the jurisdiction into which he was inquiring but not the elements which entered into his consideration in arriving at a decision, and the power is to be exercised cautiously and not in a mechanical or casual manner.\textsuperscript{287}

**Bias**

If a person has a personal interest in the subject matter of the award, it is improper for him to act as arbitrator.\textsuperscript{288} If an arbitrator’s interest in the subject matter is insignificant and unknown to him also, so that it is impossible that it could have influenced his award in any way, or even if the interest of the arbitrator is known to the parties at the time of his appointment, the court will not be disposed to set aside the award.\textsuperscript{289} A party who stands by a partial arbitrator knowing him to be partial or interested and take his chance of the award turning out to be favourable to him in spite of such partiality, cannot be permitted to put forward such grounds if the award ultimately turns out against him.\textsuperscript{290} The arbitrator is not under a duty to answer a query whether he as or has not any personal interest in the subject matter or parties. Failure to reply to a query of this description does not mean that the arbitrator’s interest or bias is ipso facto proved by reason of such failure to reply. If the relationship to a party is likely to bias the arbitrator it may disqualify him, but it is not a disqualification if he is not likely to be biased on the matter being referred to him.\textsuperscript{291}

\textsuperscript{287} State v D C Routray AIR 1983 Ori 163
\textsuperscript{288} Anand Builders v Driplex Water Engineering Pvt Ltd 1983 Punj LR (Del) 86
\textsuperscript{289} Co-operative Hindustan Bank v Bholu Nath Borooah AIR 1915 Cal 832
\textsuperscript{290} Asiatic Salvors v Dodsal Pvt Ltd AIR 1987 Bomb 335
\textsuperscript{291} Nihal Chand v Shanti Lal AIR 1935 Oudh 349
When an arbitrator is related to one of the parties and there is no evidence of biased or partial attitude during the proceedings, the award is not unfair or arbitrary.\textsuperscript{292}

On a difference of opinion having arisen between two arbitrators, partiality of one of the two arbitrators will not vitiate the award, if a reference is decided by an umpire.\textsuperscript{293} An agreement to of the arbitration before an employee of one party is valid and the court have no reason to relieve the other party of his bargain.\textsuperscript{294}

The court in exercise of its discretionary powers cannot revoke the authority of a named and agreed arbitrator unless there is reasonable apprehension of bias or dishonesty on the part of the arbitrator.\textsuperscript{295} This view has however, been modified to some extent in recent decisions, and principles of natural justice have received increased recognition in the case, so that if there is a well-founded apprehension of bias on the part of an arbitrator, because of his knowledge of the special facts, or the role that he had to play in any negotiations pending the litigation, that would constitute a legitimate justification for avoidance of the clause.\textsuperscript{296} Where the arbitration agreement provided for appointment of two arbitrators, one by each party, and one of the parties appointed one of its employees as its arbitrator, it was held that the

\begin{itemize}
\item \textsuperscript{292} Motharam Dowlatram but see Ladhurst Kedia v Bengal Jute Mills Ltd. AIR 1955 NUC (Cal) 885
\item \textsuperscript{293} National Fire and General Insurance Co v Union of India AIR 1956 Call 11
\item \textsuperscript{294} Shivlal Prasad v Union of India IAR 1975 MP 40
\item \textsuperscript{295} Secretary to Government, Transport Department v Munsuswamy Mudalir AIR 1988 SC 2232
\item \textsuperscript{296} Union of India v Coromandel Engineering Co AIR 1965 Mad 488
\end{itemize}
other party could not challenge his appointment as it was permitted by the arbitration agreement\textsuperscript{297}.

Where parties enter into a contract providing for arbitration according to certain rules, these rules will be the basis of contractual justice and to that extent the principles of natural justice in the abstract or in vaguer from will not apply\textsuperscript{298}. Corruption of an arbitrator will vitiate the award but where corruption, fraud, partiality or wrongdoing is charged against an arbitrator, it must be distinctly established, the presumption being in favour of the award\textsuperscript{299}.

The costs awarded may be so excessive as to amount to evidence of partiality\textsuperscript{300}. Unless the terms of a submission authorize an arbitrator to decide a dispute on his personal knowledge, or on the basis of his private or confidential inquiries, he must come to his conclusions on the basis of the evidence that is produced by the parties before him. But a charge that the arbitrator was so influenced must be established either from the terms of the award or from other intrinsic evidence\textsuperscript{301}.

**Ex parte awards**

The arbitrator has authority to pass an award ex parte especially where he is of the opinion that absence of a party is deliberate in order to avoid or delay the proceedings, but it is the duty of the arbitrator to apply his mind to the facts and circumstances of each case and not proceed ex parte.
automatically merely because a notice to proceed ex parte is given\(^\text{302}\). If a party fail to appear, the arbitrator ought, ordinarily, to fix another date of hearing and await the future behaviour of the defaulting party\(^\text{303}\). If the absence of the defaulting party is international so as to hinder justice, the arbitrator must give the deflating party notice that if the does not appear at a specified time and place of the proceedings, he (the arbitrator) will proceed ex parte against him\(^\text{304}\). If, after having issued such a notice, the arbitrator does not proceed ex parte on the given date, and fixes another date, he cannot proceed ex parte on the subsequent date unless similar notice has been given in respect of the subsequent date as well\(^\text{305}\). Failure of the arbitrator to give notice of this intention to proceed ex parte amounts to misconduct\(^\text{306}\). An ex parte award is upheld only when it is apparent that the failure to given such a notice has not caused any prejudice to the party against whom the ex parte award was made\(^\text{307}\).

\(^{302}\) Indian Iron and Steel Co Ltd v Sutna Stone and Lime Co Ltd AIR 1991 Cal 3
\(^{303}\) Juggilal Kamlapat v General Fihre Dealers Ltd AIR 1955 Cal 354
\(^{304}\) Juggilal Kamlapat v General Fihre Dealers Ltd AIR 1955 Cal 354
\(^{305}\) Juggilal Kamlapat v General Fihre Dealers Ltd AIR 1955 Cal 354
\(^{306}\) Lovely Benefit Chit Fund and Finance Pud Ltd v Puran Dutt Sood AIR 1983 Del 413.
\(^{307}\) Lovely Benefit Chit Fund and Finance Pud Ltd v Puran Dutt Sood AIR 1983 Del 413.