

## **Disputes Cannot Be Referred To Arbitration Where The Arbitration Agreement Itself Is Seriously Disputed As Forged Or Fabricated: Supreme Court Of India**

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### **Introduction**

In *Rajia Begum vs Barnali Mukherjee* [2026 INSC 106], the Supreme Court examined whether Courts can refer parties to arbitration under Section 8 of the Arbitration and Conciliation Act, 1996 (the "**Arbitration Act**"), or appoint an arbitrator under Section 11, when the very document containing the arbitration clause is alleged to be forged and fabricated. The Supreme Court held that arbitration is premised on consent, and where the existence of the arbitration agreement itself is under serious challenge supported by substantial material, a reference to arbitration is legally impermissible at that stage.

The judgment also clarifies two practical aspects. *First*, it reiterates the limited circumstances in which fraud allegations can prevent a reference to arbitration, particularly where the fraud plea strikes at the existence of the arbitration agreement itself. *Secondly*, it holds that the High Court's supervisory jurisdiction under Article 227 cannot be used to unsettle concurrent findings on such foundational questions in Section 8 matters.

### **Background And Facts**

The dispute arose from a partnership firm, "*M/s RDDHI Gold*", constituted by a partnership deed dated 01 December 2005 between Barnali Mukherjee, Aftabuddin and Raihan Iqbal. Rajia Begum claimed entry into the firm through a "*Deed of Admission and Retirement*" dated 17 April 2007 (the "**Admission Deed**"), purportedly executed pursuant to a power of attorney dated 17 April 2007. According to Rajia Begum, the Admission Deed retired the original partners and inducted her as a partner. The arbitration clause relied upon by her was embedded in this very Admission Deed.

Barnali Mukherjee denied the execution of the Admission Deed and denied Rajia Begum's induction as a partner at any point. She alleged that the Admission Deed was forged and fabricated. The conflict sharpened in October 2016 when Rajia Begum issued a legal notice asserting that, on the basis of the Admission Deed, she had acquired an interest of 50.33% in the erstwhile partnership. Barnali Mukherjee, by reply dated 21 November 2016, rejected the claim and reiterated that the Admission Deed was a concocted document.

## **Proceedings under Section 8, 9 and 11 of the Arbitration Act**

Proceedings under Section 9 of the Arbitration Act came to be initiated first. In these proceedings, Rajia Begum obtained interim relief from the Trial Court. On appeal, the High Court, by order dated 04 May 2018, set aside the interim order, recording that the very existence and execution of the Admission Deed was in dispute and that there was cogent material indicating its non-existence. The High Court held that it would not be prudent to grant interim protection when Rajia Begum had failed to demonstrate the existence of an arbitration agreement even on a *prima facie* basis. The Supreme Court dismissed the challenge to this order, and the High Court's *prima facie* assessment attained finality between the parties.

Barnali Mukherjee then filed a civil suit on 16 May 2018 seeking, *inter alia*, a declaration that the Admission Deed was forged. Rajia Begum filed an application under Section 8 to refer the suit to arbitration. The Trial Court dismissed the application on 06 September 2018, holding that the fraud allegations relating to the Admission Deed were complicated and, additionally, that Rajia Begum had failed to produce the original Admission Deed or a certified copy as required under Section 8(2) of the Arbitration Act. The first appellate Court affirmed the decision on 25 September 2020.

However, in writ proceedings under Article 227 of the Constitution of India, the High Court set aside the concurrent orders and, by order dated 24 September 2021, referred the suit to arbitration.

In parallel, Rajia Begum had moved the High Court under Section 11 seeking appointment of an arbitrator on the basis of the arbitration clause in the Admission Deed. By order dated 11 March 2021, the High Court declined appointment, holding that it would not be expedient to appoint an arbitrator until the issue regarding the existence of an arbitration agreement had been answered finally.

Both sides approached the Supreme Court. Rajia Begum challenged the refusal to appoint an arbitrator under Section 11 of the Arbitration Act, while Barnali Mukherjee challenged the writ order referring the civil suit to arbitration under Section 8.

## **Issue Before The Supreme Court**

The Supreme Court framed the central question as whether, in this factual matrix, the disputes could have been referred to arbitration under Section 8.

Correspondingly, whether the High Court was justified in declining appointment of an arbitrator under Section 11 given that the very existence of the arbitration agreement was seriously disputed on allegations of forgery and fabrication.

## **Fraud, Forgery and The Arbitration Agreement**

The Supreme Court reaffirmed that mere allegations of fraud do not, by themselves, derail arbitration. Relying on **A. Ayyasamy v. A. Paramasivam** [(2016) 10 SCC 386], the Apex Court reiterated that while fraud simpliciter may not nullify an arbitration agreement, Courts may proceed with a civil suit where there are serious allegations of fraud that make out a criminal offence or are so complicated as to require voluminous evidence. Crucially, **Ayyasamy (supra)** also recognised a distinct category where fraud is alleged against the arbitration provision itself, or where it permeates the entire contract including the agreement to arbitrate.

The Supreme Court then relied on **Avitel Post Studioz Ltd. v. HSBC PI Holdings (Mauritius) Ltd.** [(2021) 4 SCC 713] and noted the two working tests for identifying "serious allegations of fraud" that render the subject matter non-arbitrable at that stage. Of particular relevance was the first test: where the arbitration clause or agreement itself cannot be said to exist, in a clear case where the Court finds that the party against whom breach is alleged cannot be said to have entered into the arbitration agreement at all. In such a case, a plea of non-existence of the arbitration clause or agreement amounts to a serious allegation of fraud and takes the dispute into the realm of non-arbitrability at the threshold.

The Supreme Court also drew support from its recent decision in **Managing Director, Bihar State Food and Civil Supply Corporation Limited v. Sanjay Kumar** [(2025) SCC OnLine SC 1604], which restated the principles after considering earlier decisions including **A. Ayyasamy (supra)**, **Ameet Lalchand Shah v. Rishabh Enterprises** [(2018) 15 SCC 678], **Rashid Raza v. Sadaf Akhtar** [(2019) 8 SCC 710], and **Avitel (supra)**. The Supreme Court reiterated that allegations of fraud with respect to the arbitration agreement itself stand on a different footing and are generally recognised as falling in the realm of non-arbitrability. In such cases, the Court examines the issue as a jurisdictional threshold, and the arbitral tribunal does not examine the fraud allegation on merits but considers it only for exclusion of jurisdiction.

Applying these principles, the Supreme Court held that the Admission Deed was not merely a disputed commercial document. It was the very foundation of Rajia Begum's claim to partnership and the foundation of the alleged arbitration agreement. On a *prima facie* consideration of the record, the Supreme Court found substantial and cogent material casting serious doubt on the genuineness of the Admission Deed.

Three features were particularly significant. *First*, while the Admission Deed recorded that Aftabuddin and Raihan Iqbal retired on 17 April 2007, Rajia Begum admitted that her husband, Aftabuddin, continued to function as a partner of the

firm from 2005 till 2010, which was wholly inconsistent with the document's recitals. *Secondly*, the Admission Deed did not appear in any contemporaneous documentary record for nearly nine years and surfaced for the first time only on 02 October 2016 when Rajia Begum asserted a 50.33% stake. *Thirdly*, contemporaneous documents between 2009 and 2010 suggested that Rajia Begum's role was that of a guarantor for financial facilities availed by the firm, while continuing to portray Aftabuddin and Raihan Iqbal as partners.

The Supreme Court also attached weight to the High Court's order dated 04 May 2018 in the Section 9 proceedings. While findings in Section 9 are *prima facie*, the Supreme Court held that such findings, once they attain finality, cannot be ignored in subsequent proceedings founded on the very same issue. The High Court's *prima facie* satisfaction regarding the doubtful existence of the arbitration agreement was therefore a relevant consideration while examining applications under Sections 8 and 11.

In this backdrop, the Supreme Court held that the Admission Deed was, at the very least, under a grave cloud of doubt requiring a detailed inquiry. Since the arbitration clause did not exist independently but was embedded in a document whose existence was seriously disputed, arbitration could not be foisted on the parties at the threshold. Arbitration is founded upon consent, and a party can be bound by the arbitral process only if it is first shown, even on a *prima facie* basis, that the party had agreed to submit disputes to arbitration. Where the arbitration agreement itself is alleged to be forged or fabricated, the dispute strikes at the root of arbitral jurisdiction and falls squarely within the category of disputes generally recognised as non-arbitrable at that stage.

### **Article 227 And The Limits Of Supervisory Jurisdiction**

The Supreme Court held that the High Court exceeded its supervisory jurisdiction under Article 227 by dislodging concurrent findings of the Trial Court and the first appellate Court. Those Courts had found that the fraud allegations were serious and that the statutory requirement under Section 8(2) of the Arbitration Act had not been met because the original Admission Deed or a certified copy had not been produced. The Supreme Court reiterated that jurisdiction under Article 227 is not an appellate jurisdiction in disguise and does not permit reappraisal of evidence.

The Supreme Court held that the dispute relating to the Admission Deed involved serious allegations going to the root of the arbitration agreement itself and was not amenable to arbitration at this stage. It therefore set aside the High Court's order dated 24 September 2021 referring the suit to arbitration under Section 8 (in Article 227 proceedings). Conversely, it affirmed the High Court's order dated 11 March 2021 refusing appointment of an arbitrator under Section 11, holding that appointment would be premature and legally impermissible when the

existence of the arbitration agreement itself is in serious dispute and requires adjudication.

## Comment

Courts may adopt a pro-arbitration approach where an arbitration agreement is at least *prima facie* established, but that approach cannot override the requirement of consent. Where the arbitration clause is contained only in a document whose very execution is credibly impeached as forged or fabricated, reference and appointment are not permissible at the threshold. The judgment also cautions against using writ jurisdiction to overturn concurrent findings on questions that are fundamentally factual and go to the existence of the arbitration agreement.

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