

Unsuccessful Party In Arbitration Can Invoke Section 9 At The Post-Award Stage: Supreme Court

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Introduction

In *Home Care Retail Marts Pvt. Ltd. v. Haresh N. Sanghavi* [2026 INSC 415], the Supreme Court considered whether a party which has lost in arbitration, and therefore has no enforceable award in its favour, can maintain an application under Section 9 of the Arbitration and Conciliation Act, 1996 at the post-award stage.

The Supreme Court held that an unsuccessful party is not barred from invoking Section 9 after the award has been rendered but before its enforcement. The Supreme Court clarified that Section 9 uses the expression "a party", which means a party to an arbitration agreement, and the statute does not confine the remedy only to an award-holder.

At the same time, the Supreme Court cautioned that the threshold for grant of interim relief to an unsuccessful party would be higher. Such relief would be granted only in rare and compelling cases, after applying the settled tests of prima facie case, balance of convenience and irreparable harm.

In this article, we navigate through the facts of the case and the findings rendered by the Supreme Court.

Brief Facts

The issue arose from a conflict of views among different High Courts on the maintainability of a post-award application under Section 9 by an unsuccessful party in arbitration.

The Bombay High Court in *Dirk India Pvt. Ltd. v. Maharashtra State Electricity Generation Co. Ltd.* [2013 SCC OnLine Bom 481], the Delhi High Court in *Nussli Switzerland Ltd. v. Organizing Committee Commonwealth Games, 2010* [2014 SCC OnLine Del 4834] and *National Highways Authority of India v. Punjab National Bank* [2023 SCC OnLine Del 4810], the Madras High Court in *A. Chidambaram v. S. Rajagopal* [OA No. 843 of 2024], and the Karnataka High Court in *Smt. Padma Mahadev v. M/s. Sierra Constructions Private Limited* [COMAP No. 2 of 2021] had taken the view that an unsuccessful party cannot maintain an application under Section 9 at the post-award stage.

The basis of this view was that post-award interim protection under Section 9 is intended to secure the "fruits of the award". Since an unsuccessful party has no award in its favour, it was held that such a party cannot seek interim measures under Section 9.

On the other hand, the Telangana High Court in *M/s. Saptarishi Hotels Pvt. Ltd. v. National Institute of Tourism & Hospitality Management* [2019 SCC OnLine TS 1765], the Gujarat High Court in *GAIL (India) Ltd. v. Latin Rasayani Pvt. Ltd.* [2014 SCC OnLine Guj 14836], and the Punjab and Haryana High Court in *M/s. DLF*

Home Developers Ltd. v. M/s. Orris Infrastructure Pvt. Ltd. [FAO-CARB-51-2024] had taken the contrary view.

The Supreme Court was therefore called upon to settle whether Section 9, at the post-award stage, is available only to the successful party or to any party to the arbitration agreement.

Arguments from Both Sides

It was contended in favour of maintainability that Section 9 uses the expression "a party" and not "a successful party" or "an award-holder". Since Section 2(1)(h) defines "party" as a party to an arbitration agreement, the remedy under Section 9 could not be narrowed by judicial interpretation.

It was further submitted that Section 9 operates at three stages: before arbitral proceedings, during arbitral proceedings, and after the award but before enforcement. The legislature consciously allowed recourse to Section 9 even at the post-award stage and did not restrict this right to successful parties alone.

It was also argued that Sections 34, 36 and 9 operate in distinct spheres. Section 34 deals with challenge to an award. Section 36 deals with enforcement and stay of enforcement. Section 9, however, protects the subject matter of arbitration or the amount in dispute. Therefore, the availability of remedies under Sections 34 and 36 could not bar interim protection under Section 9.

The opposing argument was that once an award is rendered, the rights of parties stand adjudicated. At the post-award stage, Section 9 should operate only to secure the fruits of the award. Since an unsuccessful party has no enforceable award, it was argued that such a party has nothing to protect under Section 9.

It was also submitted that permitting unsuccessful parties to invoke Section 9 may undermine finality of awards, increase court intervention, and open the door to unnecessary post-award litigation.

Findings of the Supreme Court

The Supreme Court held that an unsuccessful party in arbitration may invoke Section 9 at the post-award stage.

The Supreme Court first considered the meaning of the expression "a party" in Section 9. The Supreme Court noted that Section 2(1)(h) defines "party" as a party to an arbitration agreement. Neither Section 2(1)(h) nor Section 9 draws any distinction between a successful and an unsuccessful party.

The Supreme Court held that the meaning of "a party" cannot change depending on the result of the arbitration. If such an interpretation were accepted, the expression would mean all parties before the award but only successful parties after the award. The Supreme Court held that such an approach would amount to adding a limitation which the statute does not contain.

The Supreme Court also noted that Section 9 expressly permits interim measures after the award but before enforcement. This is wider than Article 9 of the UNCITRAL Model

Law, which provides for interim measures before or during arbitral proceedings. The Supreme Court held that the Indian legislature consciously expanded the scope of Section 9 by including the post-award stage and did not impose any restriction on the category of parties entitled to seek such relief.

The Supreme Court rejected the reasoning adopted in **Dirk India (supra)** that post-award Section 9 relief is confined to protecting the fruits of the award. The Supreme Court held that Section 9 uses wider expressions such as "subject matter of arbitration" and "amount in dispute". These expressions cannot be reduced to the narrower idea of protecting only an enforceable award.

The Supreme Court further held that Sections 34, 36 and 9 serve different purposes. Sections 34 and 36 deal with challenge to the award and its enforcement. Section 9 deals with interim protection. Therefore, merely because an unsuccessful party may challenge the award under Section 34 or seek stay under Section 36, it does not follow that such party is barred from seeking interim measures under Section 9.

The Supreme Court also considered the effect of **Gayatri Balasamy v. ISG Novasoft Technologies Limited [2025 SCC OnLine SC 986]**. In **Gayatri Balasamy (supra)**, the Supreme Court recognised that courts exercising jurisdiction under Sections 34 and 37 may modify an arbitral award in limited circumstances, including where the award is severable or where clerical, computational or typographical errors require correction. The Supreme Court held that this further weakens the assumption that post-award proceedings can only result in the award being upheld or set aside in its entirety.

The Supreme Court gave examples of situations where an unsuccessful party may require interim protection. These may include cases where an award was passed without proper notice, where the award appears to be tainted by fraud or corruption, where interim protection granted during arbitration may need to continue, or where the subject matter may be irreversibly altered during the pendency of the Section 34 challenge.

The Supreme Court clarified, however, that unsuccessful parties are not automatically entitled to relief under Section 9. The ordinary requirements for interim relief continue to apply. The applicant must establish a prima facie case, balance of convenience, and irreparable harm. The Supreme Court specifically held that the threshold would be higher when the applicant is an unsuccessful party in arbitration.

Accordingly, the Supreme Court held that the decisions of the Bombay, Delhi, Madras and Karnataka High Courts, insofar as they denied unsuccessful parties the opportunity to apply under Section 9, do not lay down good law. The Supreme Court approved the contrary view taken by the Telangana, Gujarat and Punjab and Haryana High Courts.

Comment

The judgment in **Home Care Retail Marts (supra)** is a significant clarification on the scope of Section 9 at the post-award stage.

The Supreme Court has rejected an award-holder-only reading of Section 9. The decision clarifies that the statutory right to seek interim protection belongs to "a party" to the arbitration agreement, and not only to a party which has succeeded in arbitration.

At the same time, the judgment does not dilute the finality of arbitral awards. The Supreme Court has balanced the statutory text with arbitral discipline by making it clear that an unsuccessful party must satisfy a higher threshold for interim relief. A mere challenge under Section 34 will not be enough.

The decision is particularly relevant in cases involving bank guarantees, preservation of assets, fraud-tainted awards, awards passed without proper notice, or situations where interim protection granted during arbitration may need to continue while the award is under challenge.

The judgment also clarifies that Section 9 is not limited to preserving the "fruits of the award". Its function is wider. It may protect the subject matter of arbitration or the amount in dispute until the judicial process reaches its conclusion.

The decision therefore restores the breadth of Section 9 while ensuring that courts remain cautious in granting post-award interim relief to unsuccessful parties.

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