

Article 227 Challenge Against Rejection Of Section 16 Objection Must Be Restricted To Patent Lack Of Inherent Jurisdiction: Supreme Court

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Introduction

In a recent decision in ***Manash Kamal Bezboruah vs. Bokahola Tea Company Private Limited*** [2026 INSC 701], the Supreme Court of India ("**Supreme Court**"), reiterated that the supervisory jurisdiction of High Courts under Article 227 of the Constitution of India, though not ousted by the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**"), must be exercised with extreme circumspection against orders passed by an arbitral tribunal under Section 16 of the Arbitration Act. The Supreme Court held that where an arbitral tribunal rejects a jurisdictional objection, interlocutory interference under Article 227 is warranted only in the exceptional situation of a patent lack of inherent jurisdiction, and the ordinary remedy lies under Section 34 after the final award. The Supreme Court further clarified that the question whether a non-signatory is a veritable party to an arbitration agreement is a complex inquiry which the arbitral tribunal is competent to determine under the principle of kompetenz-kompetenz. In this article, we briefly navigate through the facts and findings in the aforesaid decision.

Facts

The dispute arose out of a partnership firm constituted several decades ago. A partnership deed executed in November 1976 provided that disputes or differences amongst the partners would first be referred to the other partners and, if unresolved, would thereafter be referred to arbitration before a mutually agreed third party. The appellant, who had been inducted as a partner, subsequently instituted a civil suit in 2012 seeking, amongst other reliefs, rendition of accounts and reliefs concerning alleged mismanagement and financial irregularities in the affairs of the partnership firm and certain related companies.

During the pendency of the suit, an application under Section 8 of the Arbitration Act was filed seeking reference of the disputes to arbitration. The Trial Court rejected the application, inter alia, because several defendants, including three respondent companies ("**Respondent Companies**"), were not signatories to the partnership deed and the suit could not be split between signatories and non-signatories. In doing so, the Trial Court relied upon ***Sukanya Holdings (P) Ltd. vs. Jayesh H. Pandya*** [(2003) 5 SCC 531]. The decision was subsequently affirmed by the High Court of Gauhati ("**High Court**").

The matter thereafter reached the Supreme Court. In November 2024, on the consent of the parties, the Supreme Court referred the disputes to arbitration and appointed a sole arbitrator. The Respondent Companies were parties to those proceedings and had been served, but did not contest the appeal or seek modification or review of the order referring the disputes to arbitration.

In the arbitral proceedings, the Respondent Companies filed applications seeking deletion of their names on the ground that they were non-signatories to the partnership deed. Although the applications were styled under provisions of the Code of Civil Procedure, 1908, the Supreme Court treated them, in substance, as jurisdictional objections under Section 16 of the Arbitration Act. The arbitral tribunal framed issues concerning the maintainability of the proceedings against non-signatories and subsequently rejected the applications. The tribunal proceeded on the basis that the earlier order of the Supreme Court referring the parties to arbitration left no scope to reconsider whether the Respondent Companies were bound by the arbitration agreement.

The Respondent Companies challenged the tribunal's order before the High Court under Article 227 of the Constitution. The High Court first stayed the notices issued to them in the arbitral proceedings and thereafter rejected the appellant's preliminary objection to the maintainability of the revision petition. The High Court observed that the earlier order of the Supreme Court had not considered the group of companies doctrine and held that its supervisory jurisdiction could be invoked to examine whether the tribunal's order suffered from a patent lack of inherent jurisdiction or perversity. The appellant accordingly approached the Supreme Court.

Submissions

The appellant contended that the Respondent Companies were amenable to arbitration in view of the inter-party relationship, commonality of subject matter and the composite nature of the underlying transactions. Reliance was placed upon **Cox and Kings Ltd. vs. SAP India Pvt. Ltd.** [(2024) 4 SCC 1] to submit that non-signatories may be bound where the surrounding circumstances and their conduct disclose an intention to participate in and be bound by the underlying commercial arrangement.

It was further argued that the High Court ought not to have entertained an Article 227 challenge against the rejection of a jurisdictional objection under Section 16. According to the appellant, the statutory scheme requires a party whose objection to jurisdiction is rejected to await the final award and raise the challenge under Section 34, save in the narrowest cases where the tribunal's order is patently without inherent jurisdiction.

The Respondent Companies, on the other hand, argued that they had never consented to arbitration and did not satisfy the test for being treated as veritable parties under **Cox and Kings Ltd. vs. SAP India Pvt. Ltd.** [(2024) 4 SCC 1]. They contended that the earlier consent order could bind only those who had in fact consented and that the arbitral tribunal had wrongly assumed jurisdiction merely because the Respondent Companies had not appeared before the Supreme Court. On this basis, they sought to justify the High Court's intervention under Article 227 on the ground of patent lack of inherent jurisdiction.

Findings

(i) Article 227 Jurisdiction Survives, But Its Exercise In Arbitral Matters Is Exceptionally Narrow

The Supreme Court began by reiterating the statutory policy of minimal judicial intervention embodied in Section 5 of the Arbitration Act and the principle of kompetenz-kompetenz recognised in Section 16. It observed that the Arbitration Act is a self-contained code which ordinarily requires parties to allow the arbitral process to run its course and thereafter avail the remedies specifically provided under the statute.

At the same time, the Supreme Court recognised that the supervisory jurisdiction of the High Courts under Article 227 forms part of the constitutional framework and cannot be abrogated by legislation. The existence of that jurisdiction, however, does not mean that every interlocutory order of an arbitral tribunal can be subjected to supervisory correction.

In **SBP & Co. vs. Patel Engineering Ltd.** [(2005) 8 SCC 618], the Supreme Court had expressly disapproved the practice of challenging every order passed by an arbitral tribunal under Articles 226 or 227 during the pendency of arbitration. The statutory scheme requires a party aggrieved by an order of the tribunal, unless an appeal is specifically available under Section 37, to ordinarily await the award and raise its grievance in proceedings under Section 34.

The Supreme Court also relied upon **Deep Industries Ltd. vs. Oil and Natural Gas Corporation Ltd.** [(2020) 15 SCC 706], which recognised that while Article 227 remains available, High Courts must be extremely circumspect and restrict interference to orders that are patently lacking in inherent jurisdiction. This principle was further explained in **Punjab State Power Corporation Limited vs. Emta Coal Limited** [(2020) 17 SCC 93], where the Supreme Court held that the defect must be so apparent that it requires no elaborate argument and the perversity must, in effect, stare one in the face.

Referring also to **M/s Tarini Prasad Mohanty vs. M/s Sunflag Iron and Steel Company Limited** [2026 INSC 566], the Supreme Court reiterated that the availability of a statutory remedy under Section 34 and the legislative mandate of minimal judicial interference impose a higher threshold before a writ or supervisory remedy can be entertained at an interim stage. The Supreme Court therefore emphasised the distinction between the constitutional maintainability of a petition under Article 227 and the circumstances in which a High Court ought to entertain such a petition.

(ii) High Court Must Record A Prima Facie Patent Lack Of Inherent Jurisdiction Before Entertaining The Challenge

Applying the above principles, the Supreme Court found that the High Court had not recorded any specific finding demonstrating perversity or a patent lack of inherent jurisdiction in the tribunal's order. Merely because such

grounds were asserted by the Respondent Companies did not justify supervisory intervention at an interlocutory stage.

The Supreme Court held that, before entertaining a challenge under Article 227 against an order passed by an arbitral tribunal under Section 16, the High Court should record a prima facie finding of patent lack of inherent jurisdiction after affording the rival party an opportunity of hearing. In the absence of such a manifest jurisdictional defect, interference would be contrary to the legislative policy of minimal court intervention. An order rejecting a Section 16 objection is ordinarily to be challenged under Section 34 after the conclusion of the arbitral proceedings and the making of the final award.

(iii) Question Whether Non-Signatories Are Veritable Parties Is For The Arbitral Tribunal To Determine

The Supreme Court separately addressed the objection that the Respondent Companies were non-signatories to the partnership deed. Referring to the Constitution Bench decision in **Cox and Kings Ltd. vs. SAP India Pvt. Ltd.** [(2024) 4 SCC 1], the Supreme Court observed that determining whether a non-signatory is a veritable party to an arbitration agreement involves a complex inquiry into factual, circumstantial and legal considerations.

The Supreme Court reiterated that, at the referral stage, the Court is required only to undertake a prima facie examination of the existence of an arbitration agreement. The more intricate determination of whether a particular non-signatory is in fact bound by the arbitration agreement is appropriately left to the arbitral tribunal. This approach gives effect to the principle of kompetenz-kompetenz under Section 16 of the Arbitration Act.

Accordingly, the Supreme Court held that the arbitral tribunal was competent to decide whether the Respondent Companies were veritable parties notwithstanding their non-signatory status. Significantly, notwithstanding the tribunal's earlier reasoning that the consent order of November 2024 had left no further scope to determine whether the Respondent Companies were bound by the arbitration agreement, the Supreme Court directed the tribunal to decide their status independently and uninfluenced by the Supreme Court's decision.

The Supreme Court also noted that the Respondent Companies had been parties to the earlier proceedings before it but had not contested the reference to arbitration or sought modification or review of the consent order. The Court observed that repeated judicial interventions of this nature cause avoidable delay and undermine the very object of the Arbitration Act.

Conclusion

The decision reinforces the narrow limits within which constitutional supervisory jurisdiction may be invoked during the pendency of arbitral proceedings. While Article 227 remains constitutionally available, it is not intended to operate as an interlocutory appellate mechanism against orders passed by an arbitral tribunal under Section 16. Unless the order discloses a patent lack of inherent jurisdiction at the threshold, the statutory scheme

requires the aggrieved party to await the final award and pursue its challenge under Section 34.

The decision is equally significant in the context of non-signatory arbitration. Consistent with ***Cox and Kings Ltd. vs. SAP India Pvt. Ltd.*** [(2024) 4 SCC 1], the Supreme Court has reaffirmed that the question whether a non-signatory is a veritable party is ordinarily one for the arbitral tribunal to determine upon a holistic consideration of the underlying relationship, transaction and conduct of the parties. A referral order need not conclusively determine that question.

For parties to arbitral proceedings, the practical implication is clear. Jurisdictional objections may be raised before the tribunal under Section 16, but an unsuccessful objection should not ordinarily trigger a parallel round of supervisory litigation. Courts are expected to protect the efficiency and finality of the arbitral process by reserving interlocutory intervention for genuinely exceptional cases where the jurisdictional defect is manifest on the face of the record.

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