VARDHARMA CHAMBERS

Disputes Digest

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This edition covers four judicial decisions from August 2026. The Supreme Court has referred the enforceability of pre-deposit clauses in arbitration agreements to a larger bench, casting doubt on a 2009 ruling that had upheld them. In a separate ruling, the Court confirmed that an unsuccessful party is not automatically barred from Section 9 relief. The Delhi High Court has held that a developer who defaults on assured returns loses the right to compel allottees to take possession. The Bombay High Court has set aside part of a family arbitration award where the arbitrator went beyond the pleaded case by relying on WhatsApp messages.

JUDICIAL OVERVIEW

Judicial Developments Index: August 2026

1. **Pre-Deposit Clauses in Arbitration: Referred to a larger bench. The 2009 ruling in *S.K. Jain* is now in doubt.**
2. **Section 9 Post-Award Relief: An unsuccessful party can seek interim protection in rare and genuinely compelling cases.**
3. **Arbitrator Cannot Create a New Contract: WhatsApp exchanges used beyond the pleaded case. Award partly set aside.**
4. **Assured Returns and Developer Default: A developer who stops paying assured returns cannot later compel allottees to accept possession.**

SUPREME COURT

Pre-Deposit Clauses in Arbitration Agreements Referred to a Larger Bench

M/s Santosh Associate Private Limited v. Haryana State Industrial and Infrastructure Development Corporation Ltd. | SLP (C) No. 31245 of 2025 | 2026 INSC 872 | 17 August 2026 | Justice Manoj Misra and Justice Manmohan

The contract required the contractor to deposit 10% of any claim exceeding ₹1 lakh before invoking arbitration. When the contractor refused, the sole arbitrator dismissed the entire claim. The Commercial Court, Gurugram, upheld this, relying on *S.K. Jain v. State of Haryana* (2009), which had previously upheld such clauses.

The Supreme Court agreed with the contrary view taken in *ICOMM Tele Ltd. v. Punjab State Water Supply and Sewerage Board* (2019), which had struck down pre-deposit clauses as unnecessarily expensive and difficult to access. Since the ICOMM ruling was a two-judge bench decision and could not override *S.K. Jain*, the Court referred the matter to the Chief Justice to consider constituting a larger bench.

Before doing so, the Court made its position clear: an arbitration clause cannot impose pre-deposit conditions so onerous that the right to access dispute resolution becomes effectively meaningless. The questions before the larger bench include whether such clauses violate Section 18 of the Arbitration Act, Article 14 of the Constitution, and Section 28 of the Contract Act.

> **Key Takeaway:** The enforceability of pre-deposit clauses is now directly in question. Until the larger bench rules, parties on both sides of such clauses should take advice before relying on them.

SUPREME COURT

An Unsuccessful Party in Arbitration Can Seek Section 9 Relief in Rare and Compelling Cases

National Projects Construction Corporation Ltd. v. Ishvakoo (India) Pvt. Ltd. | Civil Appeal No. 5819 of 2025 | 2026 INSC 828 | 11 August 2026 | Justice K.V. Viswanathan and Justice Alok Aradhe

NPCC had encashed bank guarantees of ₹3.5 crore furnished by Ishvakoo after Ishvakoo failed to keep them renewed. The arbitrator subsequently dismissed Ishvakoo's claims. NPCC had filed no counterclaim at any stage. Ishvakoo challenged the award under Section 34 and simultaneously sought Section 9 relief, arguing that allowing NPCC to retain ₹3.5 crore with no award or counterclaim in its favour amounted to unjust enrichment while Section 34 proceedings were pending.

The Supreme Court dismissed NPCC's appeal. Relying on *Home Care Retail Marts Pvt. Ltd. v. Haresh N. Sanghavi* (2026), it confirmed that Section 9 is available to any party to the arbitration and is not restricted to the winning side. The threshold for an unsuccessful party is deliberately high, and the circumstances must be genuinely exceptional. On these facts, those conditions were met. NPCC was directed to deposit ₹3.5 crore in a fixed deposit with a nationalised bank at the Delhi High Court Registry until disposal of the Section 34 proceedings.

Key Takeaway: Losing an arbitration does not automatically close the door to Section 9 relief. Where the other side retains funds with no award or counterclaim entitling it to keep them, courts can and will intervene to prevent unjust enrichment.

BOMBAY HIGH COURT

An Arbitrator Cannot Create a New Contract Beyond What Was Pleaded

Sandeep Dixit v. Rekha Dixit and Ors. | Commercial Arbitration Petition (L) No. 33371 of 2024 | 2026 LLBiz HC (BOM) 450 | 4 August 2026 | Justice Sharmila U. Deshmukh

A family partnership dispute was referred to arbitration under a partnership deed. The arbitrator directed payment of 9% annual interest on a ₹5 crore loan advanced by Rekha Dixit to the firm. The basis for this, however, was not the partnership deed that governed the reference but WhatsApp exchanges between the parties. That had never been the pleaded case of either side.

Justice Deshmukh set aside the interest direction. An arbitrator's authority flows entirely from the agreement under which the reference is made. Using informal communications to impose an obligation that no party had asked the arbitrator to decide effectively created a new contract between the parties. The refund of ₹5 crore and Rekha's retirement from the firm were left undisturbed.

Key Takeaway: An arbitrator decides what the parties have referred and nothing more. Going beyond the pleaded case, even based on messages exchanged between the parties, is a ground to set aside that part of the award.

DELHI HIGH COURT — DIVISION BENCH

A Developer Who Stops Paying Assured Returns Cannot Compel Allottees to Accept Possession

Omaxe Ltd. v. Mr. Joginder Singh Nijjar and Anr. | FAO(OS)(COMM) 236/2023 | 2026 LLBiz HC(DEL) 834 | 14 August 2026 | Justice V. Kameswar Rao and Justice Manmeet Pritam Singh Arora

Two co-allottees of a commercial unit in Omaxe Novelty Mall, Lawrence Road, Amritsar, had entered into an allotment agreement in May 2008 that included an assured monthly return arrangement. Omaxe stopped paying those returns from May 2010, nearly three years before the agreement was terminated, and then sought to compel the allottees to accept possession and continue with the allotment.

The arbitral tribunal directed Omaxe to refund the principal of ₹3,35,04,650 along with pendente lite interest of ₹4,16,94,674, totalling ₹7,51,99,324, with further interest at 12% from the date of realisation and costs of ₹25 lakh. A Single Judge dismissed Omaxe's Section 34 challenge. The Division Bench dismissed the appeal and added a further ₹2 lakh in costs.

The Court was direct: having stopped paying the assured returns, Omaxe lost any right to insist that the allottees continue performing their side of the arrangement. The force majeure defence was also rejected — Omaxe had entered the agreement fully aware that it did not yet have the required ASI clearance.

Key Takeaway: A party that defaults on its own obligations cannot insist that the other side continues to perform. A developer who stops paying assured returns forfeits the right to demand possession.

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