

# HANKETSU:4

## Gayatri Balasamy

## V. ISG Novasoft Technologies Ltd

# THE EPIC BATTLE OF THE ARBITRATION AMENDMENT!

India's Supreme Court, April 30, 2025

CAN COURTS  
**MODIFY**  
AN ARBITRATION AWARD,  
OR MUST THEY SET  
IT ASIDE COMPLETELY?

FIX THE CRACK?



TEAR IT ALL DOWN?



HOW SHOULD THE COURT INTERVENE?

CHAOS IN THE COURTS!



COURT:  
"WE'LL FIX IT!"

COURT: "AWARD SET ASIDE!"



NOOO!

MODIFY THE  
AWARD!  
WE HAVE THE  
POWER!

RULES ARE RULES!  
WE CAN ONLY  
SET ASIDE!

A NATION DIVIDED!

# THE GAYATRI BALASAMY SAGA

A tale of land, highways, and broken dreams

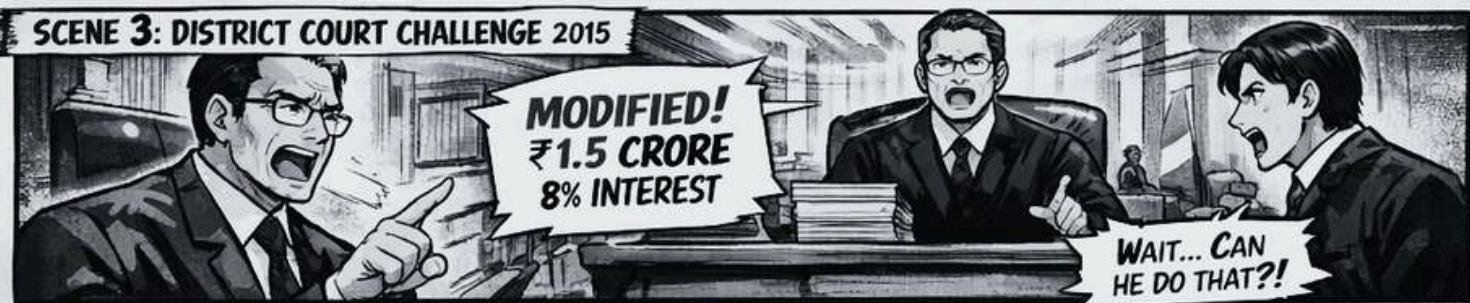
## SCENE 1: THE FARMLAND 2008-2010



## SCENE 2: THE ARBITRATION HEARING 2012-2014



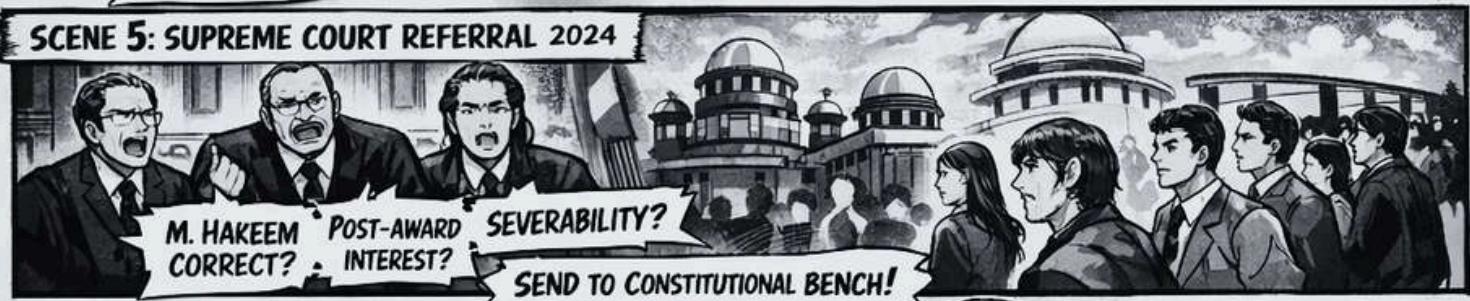
## SCENE 3: DISTRICT COURT CHALLENGE 2015



## SCENE 4: HIGH COURT APPEAL 2012-2019



## SCENE 5: SUPREME COURT REFERRAL 2024



## SCENE 6: AFTER JUDGMENT APRIL 2025



**THE END OF THE BEGINNING**

— FROM FARMLAND TO THE SUPREME COURT... —

# THE BACKSTORY: HOW WE GOT HERE!

1940

THE OLD

Get the Arbitration  
Law of the Commonwealth  
of Nations made available  
concerning the functions of  
the Arbitrator for international  
courts, which has established  
the Arbitrator's power to amend  
any award.

MODIFY

1940: COURTS COULD MODIFY AWARDS! (SECTION 15)

1996?

1996: India Adopted New Arbitration & Conciliation Act (UNCITRAL Model Law)

1996: INDIA ADOPTED NEW ARBITRATION & CONCILIATION ACT (UNCITRAL Model Law)

## THE CONFUSION BEGINS!

MODIFY

GREATER POWER INCLUDES LESSER POWER!

IT DOESN'T MAKE SENSE TO THROW AWAY AN ENTIRE AWARD OVER A SMALL ERROR!

SET ASIDE

COURTS MAY ONLY SET ASIDE!

PARLIAMENT WAS SILENT FOR A REASON!!

When they took out MODIFY, it meant "Set aside" only.

SOME JUDGES:  
INDIA STILL HAS THE POWER  
TO MODIFY AWARDS!

OTHER JUDGES: COURTS FOLLOW TEXT ONLY: NO MODIFYING!

COURTS CAN MODIFY!

NO! COURTS CANNOT MODIFY!

## CHAOS ERUPTS IN THE COURTS!

We must ADD  
"OR MODIFIED"  
to Section 34!

You can't  
REWRITE  
THE LAW!

England,  
Singapore,  
Australia all  
allow modification!

10 years of litigation...  
I just want justice!

Arbitration is about  
**PARTY  
AUTONOMY!**

## PRO-MODIFICATION

Fix the crack,  
repair the award!



"OMNE MAJUS CONTINET  
IN SE MINUS"

15% Interest?  
Let's correct it  
to 8%!

No, send it BACK  
to arbitration!

It's just ironing  
out the creases!



## ANTI-MODIFICATION

Tear it down!  
Set it aside!



This will fail  
**ABROAD!**

# The Arbitration Amendment

## ACT IV: THE KEY BATTLEGROUNDS

### INTEREST RATE WAR

The contract said 8%! The arbitrator gave 18%!  
Fix this error!



### ANTI-MODIFICATION CAMP

No! Send it back to the arbitrator!



**18% OR 8%?  
MODIFY OR RETURN?**

### SEVERABLE PARTS ARE VALID!

CUT OUT THE  
BAD CLAIMS...

KEEP THE  
GOOD ONES!

AWARD  
CLAIMS 1  
2 3 4  
4 5

SEVER!

VALID!

SEVER!

### MODIFYING FRUITS?

WE CAN  
REPAIR THE  
APPLE!



YOU CAN'T  
FIX HALF AN APPLE!

TOO FAR!

**FIGHT OVER SEVERABILITY VS. MODIFICATION!**

# THE HIGH COURT APPEAL UNDER SECTION 37 (2017-2019)

The District Judge modified my award!

Section 34 can only SET ASIDE, not modify!

Project Director NHAI v. M. Hakeem (2021)!

Other judgments have allowed modifications!

Counsels, conflicting judgments are before us!

We refer this to the SUPREME COURT!

This requires a larger bench...

We're going to the Supreme Court!

Power to MODIFY?

Conflicting Rulings!

Can Courts Modify Arbitral Awards?

# The Arbitration Amendment

## ACT V: THE JUDGMENT - A SPLIT DECISION

### THE MAJORITY OPINION

LIMITED  
MODIFICATION  
ALLOWED!

### THE DISSENTING OPINION

NO!  
MODIFICATION  
IS ILLEGAL!

#### THE MAJORITY OPINION

- 1) SEVERABILITY
- 2) CLERICAL ERRORS
- 3) POST-AWARD INTEREST
- 4) ARTICLE 142 (SC ONLY)

But only with  
EXTREME RESTRAINT!

#### THE DISSENTING OPINION

- 1) TEXT IS CLEAR
- 2) PARTY AUTONOMY  
IS SACRED
- 3) LEGISLATIVE INTENT
- 4) INTERNATIONAL PROBLEM
- 5) SECTION 34(4) SOLVES IT

SLAM!

A SPLIT  
DECISION!

# ACT VI: THE PRACTICAL IMPLICATIONS

THE MAJORITY HAS SPOKEN!  
LIMITED MODIFICATION ALLOWED!

BUT I DISSENT!  
STRICTLY FOLLOW THE LAW!

## Scenario 1: SMALL MATH ERROR

BEFORE:  
SET ASIDE  
THE AWARD!

FIXED  
AWARD:  
1002

PHEW!  
FIXED QUICKLY!

## Scenario 2: WRONG INTEREST RATE

BEFORE:  
WRONG RATE!  
THROWN OUT!

FIXED  
AWARD:  
100\$

FINALLY!  
I DON'T HAVE  
TO WAIT!

## Scenario 3: PARTIAL AWARD

TWO BAD CLAIMS...

X → X  
REJECTED

BEFORE & AFTER:  
SEVER THEM!

X X AWARD

## Scenario 4: SERIOUS LEGAL ERROR

BEFORE & AFTER:  
AWARD SET ASIDE!

NO MODIFICATION  
FOR BIG  
MISTAKES!

IT'S STILL  
CONFUSING...  
HOW WILL THIS  
WORK INTERNATIONALLY?

## FLEXIBILITY vs. CERTAINTY

ONLY TIME WILL TELL...

IS THIS THE END OF THE STORY...  
...OR JUST THE BEGINNING?

# EPILOGUE

THE JUDGMENT IS PRONOUNCED...



FLEXIBILITY vs. CERTAINTY

PRACTICAL JUSTICE vs. STRICT RULES!

