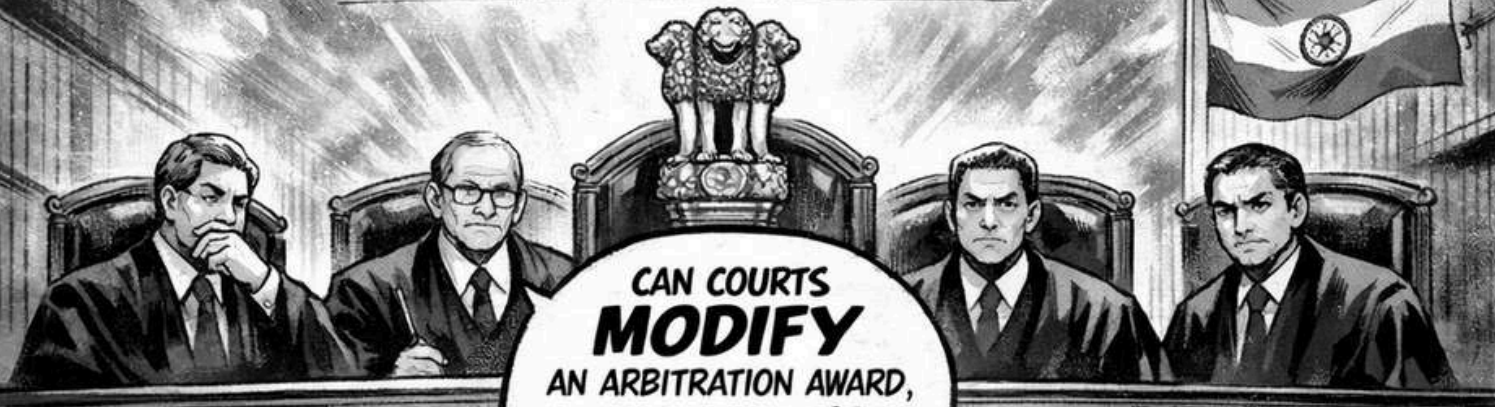


HANKETSU:4
Gayatri Balasamy
v.
ISG-Novasoft Technologies Ltd

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

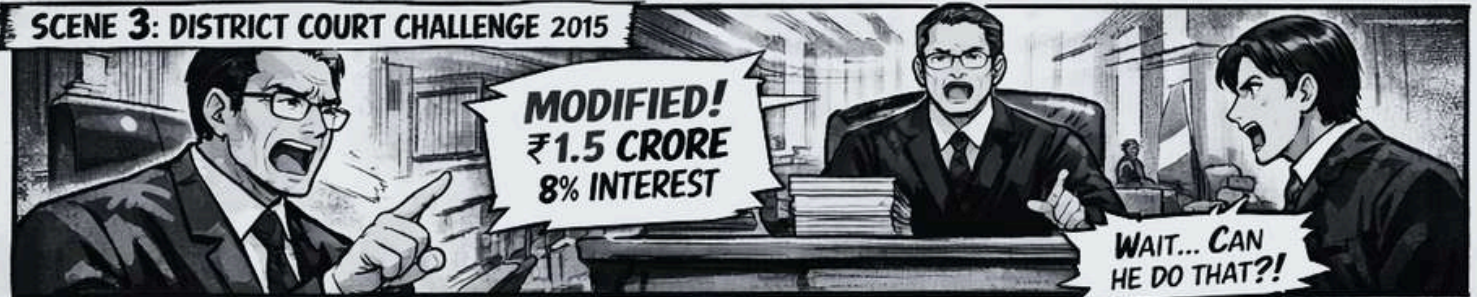
SCENE 1: THE FARMLAND 2008-2010



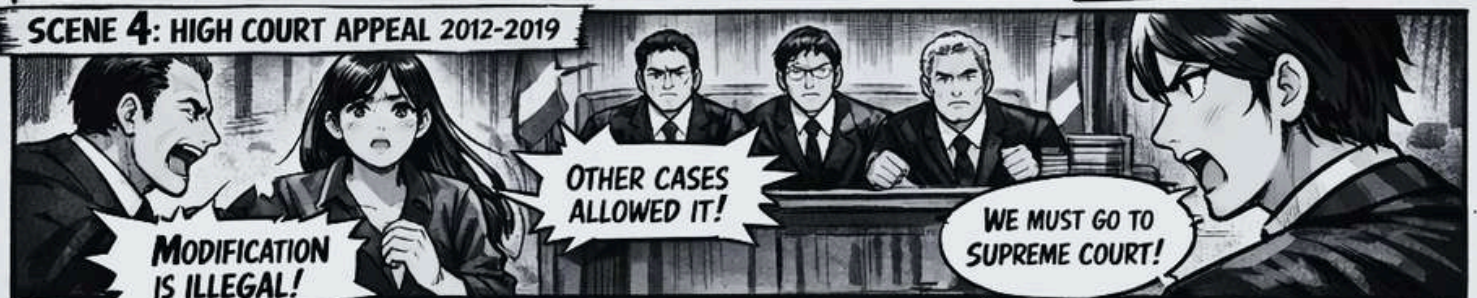
SCENE 2: THE ARBITRATION HEARING 2012-2014



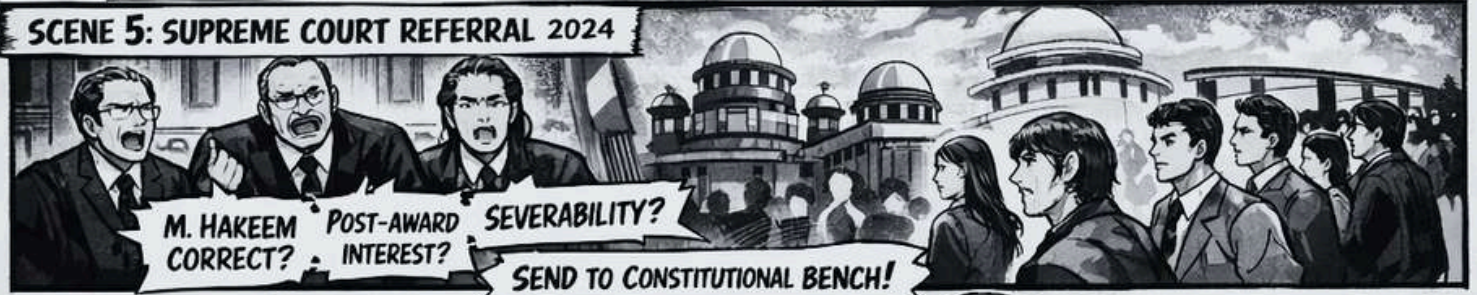
SCENE 3: DISTRICT COURT CHALLENGE 2015



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

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!

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

SET ASIDE

COURTS MAY
ONLY SET ASIDE!

PARLIAMENT
WAS SILENT
FOR A REASON!!
When they took out MODTY:
it meant 'Set aside' only!

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!

Arbitration is about
PARTY
AUTONOMY!

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

PRO-MODIFICATION

Fix the crack,
repair the award!



"OMNE MAJUS CONTINET
IN SE MINUS"

ANTI-MODIFICATION

Tear it down!
Set it aside!



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

It's just ironing
out the creases!

No, send it **BACK**
to arbitration!

This will fail
ABROAD!

The Arbitration Amendment

ACT IV: THE KEY BATTLEGROUND

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!

Counselors, conflicting judgments are before us!

We refer this to the SUPREME COURT!

This requires a larger bench...

We're going to the Supreme Court!

Can Courts Modify Arbitral Awards?

Power to MODIFY?

Conflicting Rulings!



The Arbitration Amendment

ACT V: THE JUDGMENT - A SPLIT DECISION

THE MAJORITY OPINION

**LIMITED
MODIFICATION
ALLOWED!**



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

**NO!
MODIFICATION
IS ILLEGAL!**

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...

REJECTED

BEFORE & AFTER:
SEVER THEM!

AWARD

Scenario 4: SERIOUS LEGAL ERROR

BEFORE & AFTER:
AWARD SET ASIDE!

START OVER!
GO BACK TO ARBITRATOR!

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!



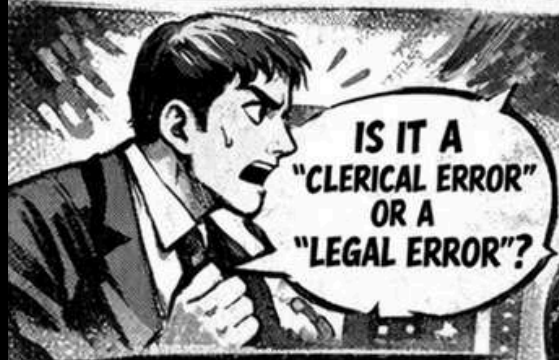
BUSINESSES WONDER:
"WILL THIS HELP US, OR CAUSE CHAOS?"



LAWYERS WHSPER:
"WHAT COMES NEXT?"



ARBITRATORS THINK:
"WILL COURTS INTERFERE MORE NOW?"



MORE LITIGATION LOOMS!



WILL PARLIAMENT CHANGE THE LAW?

JUDICIAL ACTIVISM?



PARLIAMENTARY SUPREMACY?



— WHAT HAPPENS NEXT? —

... ONLY TIME WILL TELL...