

HANKETSU 1/4

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: "AWARD SET ASIDE!"



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

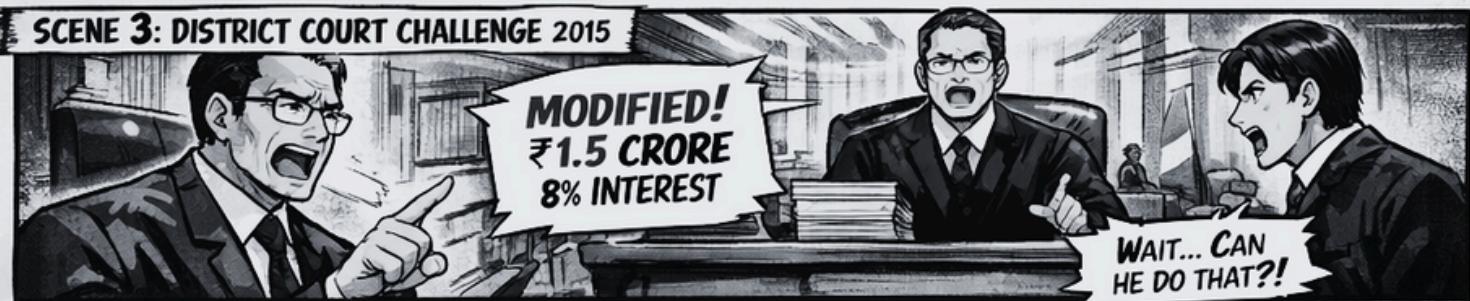
SCENE 1: THE FARMLAND 2008-2010



SCENE 2: THE ARBITRATION HEARING 2012-2014



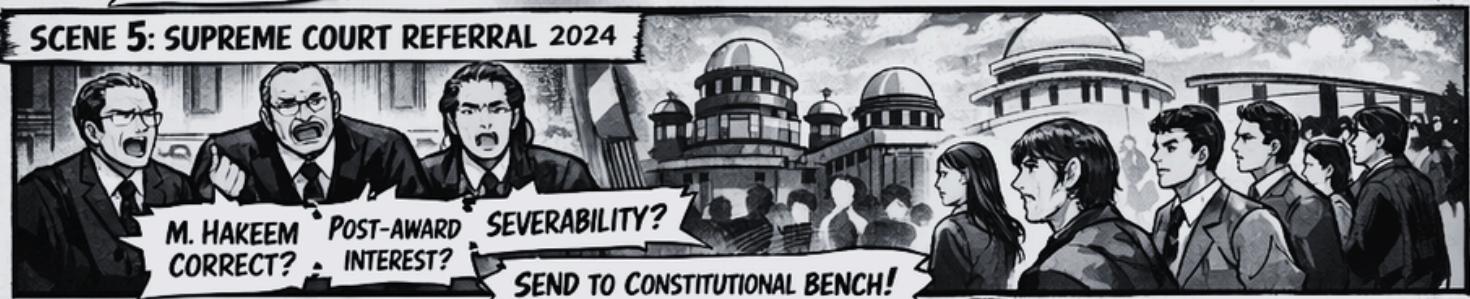
SCENE 3: DISTRICT COURT CHALLENGE 2015



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

At the time of the
of the Arbitration Act
in India, Courts could
make awards that were
not in accordance with
the arbitration agreement.
Courts could also make
arbitrators' awards.

MODIFY

1996?

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

1940: COURTS COULD MODIFY
AWARDS! (SECTION 15)

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%!

Tear it down!
Set it aside!

ANTI-MODIFICATION



It's just ironing
out the creases!

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

No, send it BACK
to arbitration!

It's just ironing
out the creases!

It's just ironing
out the creases!

This will fail
ABROAD!

It's just ironing
out the creases!

It's just ironing
out the creases!

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

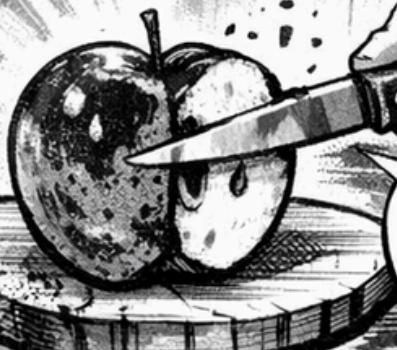
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SEVER!

VALID!

MODIFYING FRUITS?

WE CAN
REPAIR THE
APPLE!



SEVER!

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!

START OVER!
GO BACK TO ARBITRATOR!

IT'S STILL
CONFUSING...

FLEXIBILITY vs. CERTAINTY

HOW WILL THIS
WORK INTERNATIONALLY?

ONLY TIME WILL TELL...

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

EPILOGUE

THE JUDGMENT IS PRONOUNCED...

LIMITED
MODIFICATION
IS PERMITTED!

THIS IS JUDICIAL
LEGISLATION!

FLEXIBILITY vs. CERTAINTY

PRACTICAL JUSTICE vs. STRICT RULES!



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



LAWYERS WHISPER:
"WHAT COMES NEXT?"



ARBITRATORS THINK:
"WILL COURTS INTERFERE MORE NOW?"



JUDICIAL ACTIVISM?

PARLIAMENTARY SUPREMACY?

