



ARBITRATION AND CONCILIATION

Forged Arbitration Clause and the Limits of Arbitrability: Supreme Court Clarifies

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Introduction

In *Rajia Begum v. Barnali Mukherjee & Anr.*¹, the Supreme Court of India examined a significant question concerning the arbitrability of disputes where the very existence of the arbitration agreement is alleged to be founded on a forged document. The decision reiterates the foundational principle that arbitration is premised on consent and clarifies that where the arbitration clause itself is seriously disputed on grounds of forgery and fabrication, such disputes may fall outside the domain of arbitration. The judgment arose from two connected civil appeals involving proceedings under Sections 8, 9 and 11 of the Arbitration and Conciliation Act, 1996 (“the Act”), as well as supervisory jurisdiction under Article 227 of the Constitution.

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Factual Background

The dispute arose out of a partnership firm styled *M/s RDDHI Gold*, constituted in 2005 between Barnali Mukherjee (appellant in one appeal), Aftabuddin, and Raihan Iqbal. Rajia Begum (Respondent No.1) claimed that in April 2007, Aftabuddin (Respondent Nos. 2) and Raihan Iqbal (Respondent 3) executed a Power of Attorney in her favour and that, pursuant thereto, a Deed of Admission and Retirement dated 17.04.2007 (“Admission Deed”) was executed. According to her, this deed inducted her as a partner with a 50.33% share, while the original partners retired. The Admission Deed allegedly contained an arbitration clause. The appellant categorically denied the execution and genuineness of the Admission Deed and asserted that it was a forged and fabricated document. It was further contended that Respondent No.1 was never inducted as a partner at any point in time. The dispute thus revolves on the validity and existence of the Admission Deed, which also formed the foundation of the alleged arbitration agreement.

Procedural History

The litigation unfolded across multiple proceedings:

1. **Section 9 Proceedings (Interim Relief):** Respondent No.1 sought interim measures under Section 9 of the Act. The High Court refused relief, observing that the very existence and execution of the Admission Deed was in serious dispute and that there was cogent material indicating its non-existence. The Supreme Court dismissed the challenge to this order, thereby lending finality to the High Court’s prima facie findings.
2. **Section 8 Application (Reference to Arbitration):** The appellant instituted a civil suit seeking declaration that the Admission Deed was forged. Respondent No.1 filed an application under Section 8 seeking reference of the suit to arbitration.

The Trial Court and the First Appellate Court rejected the application, holding that the allegations of fraud were serious in nature and that the original or certified copy of the Admission Deed had not been produced as required under Section 8(2) of the Act. However, the High Court, exercising jurisdiction under Article 227 of the Constitution, set aside these concurrent findings and referred the dispute to arbitration.

- **Section 11 Application (Appointment of Arbitrator):** In parallel, Respondent No.1 sought appointment of an arbitrator under Section 11 of the Act. The High Court declined the request, holding that it would not be appropriate to appoint an arbitrator when the existence of the arbitration agreement itself was in serious doubt. Both orders were challenged before the Supreme Court.

Issue for Determination

The central issue before the Court was whether disputes could be referred to arbitration, or an arbitrator appointed, when the very existence of the arbitration agreement is seriously disputed on allegations of forgery and fabrication.

Legal Position on Fraud and Arbitrability

The Supreme Court revisited established precedents including *A. Ayyasamy v. A. Paramasivam*², *Rashid Raza v. Sadaf Akhtar*³, *Avitel Post Studios Ltd. v. HSBC PI Holdings (Mauritius) Ltd.*⁴, and the recent decision in *Managing Director, Bihar State Food and Civil Supply Corporation Ltd. v. Sanjay Kumar*⁵ (2025).

The Court reaffirmed two important tests:

1. Whether the allegation of fraud permeates the entire contract including the arbitration clause, rendering it void; and
2. Whether it can be said that the party against whom arbitration is invoked never entered into the arbitration agreement at all.

Where the fraud goes to the root of the arbitration agreement itself, the dispute is generally recognized as non-arbitrable. In such cases, the court must examine the issue as a jurisdictional question before allowing arbitral proceedings to commence.

Court's Analysis

Applying these principles, the Supreme Court examined the factual matrix and identified several circumstances casting serious doubt on the genuineness of the Admission Deed: Respondent No.2, the husband of Respondent No.1, was recorded in the Admission Deed as having retired in April 2007. However, it was admitted that he continued to function as a partner until 2010. The Admission Deed did not surface in any contemporaneous records for nearly nine years and was first relied upon only in 2016. Documentary material, including banking correspondence and financial instruments between 2009 and 2010, continued to reflect Respondent Nos. 2 and 3 as partners. Respondent No.1's role in financial transactions was that of a guarantor, not a partner. The original or certified copy of the Admission Deed was not produced in compliance with Section 8(2).

The Court observed that arbitration is founded upon consent. When the arbitration clause is embedded in a document whose very existence is under a "grave cloud of doubt," the dispute strikes at the root of arbitral jurisdiction. The Court further held that although findings under Section 9 are prima facie in nature, once such findings attain finality, they cannot be ignored in subsequent proceedings involving the same foundational issue. Importantly, the Court emphasized that the High Court's jurisdiction under Article 227 is supervisory and not appellate. It does not permit reappraisal of evidence or interference with concurrent factual findings unless there is patent perversity. In the present case, the High Court was not justified in overturning the concurrent rejection of the Section 8 application. Conversely, the High Court was correct in declining appointment of an arbitrator under Section 11, since the existence of the arbitration agreement itself was seriously disputed.

Decision

The Supreme Court held that the dispute concerning the Deed of Admission and Retirement dated 17 April 2007 involved serious allegations going to the very root of the arbitration agreement itself, as the document containing the arbitration clause was alleged to be forged and fabricated. In such circumstances, the matter was not amenable to arbitration at this stage. The Court set aside the High Court's order dated 24 September 2021 directing reference of the dispute to arbitration under Section 8 of the Arbitration and Conciliation Act, 1996, and affirmed the High Court's order dated 11 March 2021 rejecting the application for appointment of an arbitrator under Section 11. Consequently, one appeal was allowed and the other dismissed, with no order as to costs.

Conclusion

The decision in *Rajia Begum v. Barnali Mukherjee* reaffirms a fundamental principle: arbitration cannot proceed in the absence of demonstrable consent. When the arbitration clause itself is alleged to be forged or fabricated, courts must first determine whether a valid arbitration agreement exists before invoking the arbitral process. The judgment draws a clear distinction between allegations of fraud arising out of contractual performance which may be arbitrable and allegations that challenge the very existence of the arbitration agreement. The latter fall within the domain of judicial determination and are generally non-arbitrable. In doing so, the Supreme Court has reinforced the integrity of arbitral jurisdiction while preserving the essential role of courts in safeguarding the threshold requirement of consent.

1. 2026 INSC 106 (@ SLP (C) NO.6013 OF 2021) with (@ SLP (C) NO.20262 OF 2021) ??
2. (2016) 10 SCC 386 ??
3. (2019) 8 SCC 710 ??
4. (2021) 4 SCC 713 ??
5. (2025) SCC OnLine SC 1604 ??

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