2026:BHC-OS:12448

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION (L) NO.40041 OF 2025

Deepak Shripat More ....Petitioner

Versus

Udaysingh Harinarayansingh Rajpurohit & Ors. ...Respondents

Mr. Karan Bhosale *a/w. Neha Bhosale, Anuja Diwadkar, Harsh Sawant, Shivangi B. & Yashwant Singh i/b. NDB Law, for Petitioner.*

Mr. Anil D'souza *i/b. Achala Hatode, Advocate for Respondent No.1.*

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : May 4, 2026

JUDGEMENT:

Context and Factual Background:

1. Two key issues fall for consideration in this Petition filed under Section 37(2)(a) of the Arbitration and Conciliation Act, 1996 (***"the Act"***) :-

A] Whether denial of a prayer for impleading a third party who is presented as a veritable party is it all appealable; and

B] Whether in the facts of the case, the Impugned Order dated September 4, 2025 ("***Impugned Order***"), denying such prayer is perverse and deserves any interference?

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2. The factual matrix falls in a rather narrow compass. The parties are in arbitration proceedings since December 24, 2012 (the invocation notice was issued on this date). The disputes and differences relate to a Partnership Firm titled M/s Shree Estate Ventures (***"Shree"***), which was formed vide a Partnership Deed dated May 21, 2004, between the Petitioner, Deepak Shripat More (***"More"***), who is the claimant in the arbitration, and Respondent No.1, Udaysingh Harinarayansingh Rajpurohit (***"Rajpurohit"***). Shree was formed in and around the year 2004 for the purposes of building and developing properties. Shree started developing a property in Bhayander.

3. The Statement of Claim (***"SOC"***) was filed on April 15, 2014. The SOC was amended *first*, as long ago as January 2015 and *next*, in April 2024. A *third* round of amendments were sought in November 2024, a part of which was to implead two new respondents to the arbitration proceedings, all of which amendments have been rejected. The dismissal of the third round of amendments by the Impugned Order, has been sought to be challenged in the captioned Petition to the limited extent of acceptance of the plea of absence of jurisdiction by Rajpurohit and the parties sought to be impleaded.

4. The SOC has originally filed contentions that Rajpurohit had duped and defrauded More into signing multiple blank cheques, which had been signed

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on the understanding that the amounts would be used to pay vendors, who were providing goods and services to Shree.

5. According to More, as it transpired, the payments pursuant to these cheques went to Rajpurohit, Respondent No.2, Neema Udaysingh Rajpurohit (*"Neema"*), and Respondent No.3 and M/s Sakshi Infrastructure (*"Sakshi"*). More contends that Sakshi being a Partnership Firm of Rajpurohit and Neema, and that it was always his belief that it was another Proprietorship Firm of Rajpurohit. Through such *modus operandi*, More would contend, monies have been siphoned out of Shree by Rajpurohit, which eventually travelled to Neema and Sakshi.

6. Therefore, an Application was filed by More on November 25, 2024, which, among other reliefs, sought impleadment of Neema and Sakshi. Apart from various amendments sought in this Application, it specifically sought to make Neema and Sakshi parties on the strength that they are veritable parties.

7. The Impugned Order holds that the case of fraud as alleged, has not been made out and therefore all that follows, including the prayer for impleadment, has been disallowed.

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Contentions of the Parties:

8. Heard Mr. Karan Bhosale, Learned Advocate on behalf of More and Mr. Anil D'souza, Learned Advocate on behalf of Rajpurohit and with their assistance, examined the material on record.

9. Mr. Bhosale would contend that there is no contract or dealing between Shree and Sakshi or for that matter between Shree and Neema. Yet significant monies have been transferred from Shree to Sakshi and Neema. Neither Neema nor Sakshi should be treated as unconnected and unrelated third parties inasmuch as Neema is the spouse of Rajpurohit and Sakshi is but a firm where Rajpurohit and Neema are the only Partners. Therefore, he would contend, they are veritable parties and recipients of funds from Shree, which necessitates making them parties if monies have to be recovered from them.

10. Details of various transactions are set out in the SOC but the Learned Arbitral Tribunal has held that fraud has to be necessarily pleaded but is not pleaded. This, he submits, renders the Impugned Order, perverse. Mr. Bhosale would point to various pleadings in the SOC including Para 10, 11 and 16 and point to a clear and specific summary of how he has pleaded fraud and yet, the Learned Arbitral Tribunal has stated that except for a bare allusion to fraud, nothing is pleaded in this regard (Para 15) by reason of which, the perversity of

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the Impugned Order is writ large, necessitating intervention under Section 37 of the Act.

11. Mr. Bhosale would fundamentally rely on the judgement of a Learned Single Judge of the Delhi High Court in ***Era Infra***[1], to contend that a challenge to a refusal by the Learned Arbitral Tribunal to permit impleadment of a party is essentially a ruling that the Learned Arbitral Tribunal has no jurisdiction over such party. That being a decision referable to Section 16 of the Act, finding an absence of jurisdiction, it would follow that an appeal is maintainable.

12. In contrast, Mr. Anil D'souza would submit that the Petition itself is not maintainable inasmuch as an order on impleadment is a procedural order and does not fall within the parameters of Section 37 of the Act. That apart, he would submit that even if this Court had jurisdiction to consider a challenge on the premise that Section 37(2)(a) could be invoked on the basis that refusal to implead is an order accepting a plea that the Learned Arbitral Tribunal has no jurisdiction, on merits, no case has been made out for intervention by this Court.

[1] *Era Infra Engineering Limited v. National Highways Authority of India & Anr. -* ***ARB.A. (COMM.) 47/2025*** *& I.A.22290/2025,* ***Judgement dated 23.03.2026****.*

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13. Mr. D’souza would contend that this is a 12-year old arbitration with the SOC being amended twice already. The Application that has been dismissed is in fact yet another prayer for amendment, which among others, seeks impleadment of parties. The impleadment of parties is only one facet of amendments sought in this Application that has been rejected. The Learned Arbitral Tribunal has rightly rejected the amendment of pleadings on the basis that the very nature of the cause of action was sought to be changed. It is in the context of the nature of the cause of action undergoing a change that the impleadment was pressed. The amendment to the pleadings being refused, it is but logical that the request for impleading purportedly necessary and proper parties was also rightly rejected.

14. Mr. D'souza would submit that a chargesheet of 2017, arising of out of FIR filed by More against Rajpurohit and Neema, is purported to have given rise to the new cause of action, based on which the amendment was sought. This very chargesheet had already been brought on record in the arbitration proceedings. The schedule of amendments set out in the Application filed in 2024, seeking impleadment as well as the other amendments pursuant to such chargesheet, would point to bringing on record multiple transactions. He would submit that the Petitioner has cited in 2024, the Covid-Pandemic, which ended in 2022, for not making this application earlier. The Learned

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Arbitral Tribunal has correctly noticed the various contentions of the parties and arrived at a very logical and reasonable finding that the amendment to the pleadings deserves to be rejected and naturally, consequently, the impleadment of the parties has been correctly disallowed.

15. Mr. D'Souza would also submit that the foundation of the claim sought to be made even in the SOC is that dealings between More and Rajpurohit lie at the heart of the disputes. The addition of certain land, admittedly and purportedly to be acquired by Rajpurohit and More in their individual capacity, lies at the heart of the matter, and even this facet has nothing to do with the arbitration agreement and Shree, the partnership firm. Therefore, when one examines a complete change to the cause of action sought to be introduced in the application, the approach of the Learned Arbitral Tribunal is a valid one and ought not to be disturbed even if it is held that a challenge under Section 37 is maintainable.

Analysis and Findings:

16. I have carefully examined the Impugned Order. For the reasons set out below, I am not inclined to interfere with the approach of the Learned Arbitral Tribunal.

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<u>Section 37 Challenge Maintainable:</u>

17. At the threshold, the provisions of Section 16 of the Act may be noticed:

> ***16. Competence of arbitral tribunal to rule on its jurisdiction.—***
>
> *(1)* ***<u>The arbitral tribunal may rule on its own jurisdiction</u>****, including ruling on any objections* ***<u>with respect to the existence or validity of the arbitration agreement</u>****, and for that purpose,—*
>
> > *(a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and*
> >
> > *(b) a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.*
>
> *(2)* ***<u>A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence</u>****; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.*
>
> *(3)* ***<u>A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.</u>***
>
> *(4)* ***<u>The arbitral tribunal may, in either of the cases referred to in sub-section (2) or sub-section (3), admit a later plea if it considers the delay justified</u>****.*
>
> *(5)* ***<u>The arbitral tribunal shall decide on a plea</u>*** *referred to in sub-section (2) or sub-section (3) and,* ***<u>where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award</u>****.*
>
> *(6)* ***<u>A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34</u>****.*
>
> ***<u>[Emphasis Supplied]</u>***

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18. A plain reading of the foregoing would show that under Section 16(1) of the Act, the Arbitral Tribunal has the power to decide on its own jurisdiction – this includes coverage of the existence or validity of an arbitration agreement. Under Section 16(2), the plea of there being no jurisdiction can be raised before the statement of defence is filed. Under Section 16(3), a plea that the Arbitral Tribunal is exceeding the scope of its authority may be filed as soon as the matter that gives rise to such contention comes about.

19. A rejection of a plea under Section 16(2) or Section 16(3) would mean that the Arbitral Tribunal has ruled in favour of its own jurisdiction, and this is not amenable to challenge until the Section 34 stage, which may be exercised, if the party that raised a jurisdictional objection is aggrieved by the arbitral award. It is possible that the Arbitral Tribunal is against the plea opposing jurisdiction but on merits holds in favour of such party eventually. In that event, the decision on jurisdiction would go without challenge even at the Section 34 stage, but during the pendency of arbitral proceedings there is no challenge conceived to the rejection of the plea.

20. This brings one to Section 37 of the Act, which reads thus:

> *37. Appealable orders.—*
>
> *(1) **Notwithstanding anything contained in any other law** for the time being in force, **an appeal shall lie from the following orders (and from no others)** to the **Court***

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> ***authorised by law to hear appeals from original decrees of the Court passing the order***, *namely:*
>
> *(a) to (c)* *****
>
> *(2)* ***Appeal shall also lie to a court from an order of the arbitral tribunal—***
>
> *(a)* ***accepting the plea referred to in sub-section (2) or sub-section (3) of section 16****; or*
>
> *(b)* *****
>
> *(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or takeaway any right to appeal to the Supreme Court.*
>
> ***[Emphasis Supplied]***

21. Section 37(2)(a) makes it clear that if the plea raised under Section 16(2) or Section 16(3) were to be accepted by the Arbitral Tribunal, the order so accepting is amenable to an appeal. This is logical inasmuch as once the Arbitral Tribunal rules that it does not have jurisdiction, the matter ends there and such a decision is amenable to a statutory right to a check and balance. This may take the form of a rejection of jurisdiction over the entire dispute and the arbitration then comes to an end, and is subjected to an appeal. It may also take the form of a rejection of jurisdiction over a party arraigned in the proceedings, which can then be subjected to a challenge.

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22. Considering how the Section 11 Court should not enter upon the facet of veritable party and must leave the issue to the Arbitral Tribunal, the Supreme Court in ***ASF Buildtech***[2] observed the following (in Paragraph 102):

> *In contrast, **determinations made by the arbitral tribunal — including on issues of jurisdiction and impleadment — are amenable to challenge under Section 16 of the Act, 1996 and, thereafter, under Section 37**. Accordingly, the better course of action is for referral courts to refrain altogether from delving, into the issue of whether a non-signatory is a veritable party to the arbitration agreement, and **to leave such matters for the arbitral tribunal to decide in the first instance**.*
>
> *[Emphasis Supplied]*

23. A decision of an Arbitral Tribunal to permit or reject impleadment of a party as a veritable party can have far-reaching consequences. However, bearing in mind, the provisions of Section 5 of the Act, where the Court is prohibited from interfering in the conduct of arbitral proceedings under Part I of the Act except where specifically provided, the Court should simply not interfere where the decision of the Arbitral Tribunal is to permit impleadment. However, where there is an acceptance of a plea for impleadment, it would necessarily follow that there is scope for intervention because if the arbitration proceedings are conducted entirely without the involvement of someone who is later found, after the award is passed, to be a veritable party, the parties

[2] *ASF Buildtech Private Limited v. Shapoorji Pallonji & Company Private Limited* – 2025 SCC OnLine SC 1016

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would be put to severe hardship with the entire arbitral proceedings being found to have been conducted without the necessary parties' involvement.

24. A Learned Single Judge of the Delhi High Court in ***Era Infra*** has analysed this facet threadbare and indicated that an Arbitral Tribunal's refusal to proceed against a party sought to be made a veritable party is amenable to challenge under Section 37(2)(a) of the Act.

25. Mr. Bhosale is right in his efforts to repel the first impression that one would normally have – that denial of impleadment is a decision against which a specific appellate remedy has not been provided. The reliance upon ***ASF Buildtech*** is well placed. Although that was a decision in relation to how the Section 11 Court should not have to sit in judgement on whether a party is a veritable party, since it may actually involve review of mixed questions of fact and law, the judgement is as much a declaration of the law on how this element is in the domain of the Arbitral Tribunal and is subject to a check and balance under Section 37. The Supreme Court has specifically and carefully declared that a decision on impleadment is amenable to an appeal, and when one reads that in the context of the scheme of Section 37(2)(a) read with Section 5 of the Act, the inexorable and necessary conclusion is that an order of the Arbitral Tribunal accepting the objection by a party to the Arbitral Tribunal having jurisdiction over it, is amenable to challenge.

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26. When one applies this to the facts of the case, it is clear that when More sought to implead Neema and Sakshi, it was not done in the form of an impleadment application but in the form of an amendment application seeking to amend the Statement of Claim. The Arbitral Tribunal did invite the response of Rajpurohit, and the Impugned Order also clearly indicates that Neema and Sakshi too filed their responses, made their submissions on the subject matter of impleadment and were also heard in the matter of impleadment. In fact, nothing else in the Impugned Order, insofar as it concerns the other amendments sought in the application and rejected, is appealable. To the extent the application filed by More entailed impleadment of Neema and Sakshi, and such plea came to be rejected after treating the bid to implead as an application for impleadment, the rejection would, to the limited extent of accepting the plea of Rajpurohit, Neema and Sakshi against the Arbitral Tribunal having jurisdiction over the parties sought to be impleaded, be amenable to a challenge under Section 37(2)(a) would lie.

27. Therefore, on the first issue, in the facts of the case, it is apparent that a plea against jurisdiction was raised by not only Neema and Sakshi, but also by Rajpurohit. That plea having been accepted, the Impugned Order, to the extent it accepts the plea of absence of jurisdiction over Neema and Sakshi, is an appealable order. Therefore, the captioned Petition is indeed maintainable.

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Valid Rejection of Impleadment Request:

28. The next question is whether the Learned Arbitral Tribunal was wrong in its rejection of the request for impleadment.

29. Having examined the Impugned Order, it is apparent that the Learned Arbitral Tribunal has found that the Statement of Claim had set up a certain case way back in 2012. The parties have been litigating in this arbitration with the Learned Arbitrator manning the Arbitral Tribunal having undergone a change twice over – this is the third arbitrator – and in earlier rounds, the Learned Arbitral Tribunal has already taken a view on mixed questions of fact and law and kept contentions about the arbitrability of certain claims open for leading evidence and taking an eventual view.

30. This has some bearing on the merits of the current challenge. Among the reasons for impleading Neema and Sakshi are five transactions – all of which have been analysed by the Learned Arbitral Tribunal. Two transfers of funds from Shree to Sakshi for a total sum of Rs. 25 Lakhs, and a return of Rs. 3 Lakhs are relied upon by More. The contention is that Sakshi had no business dealings with Shree for such transactions to take place. However, More was a party to the fund transfers, to which More contends that his signatures had been obtained fraudulently since he had trusted Rajpurohit to

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sign blank cheques. This has already been examined earlier by the Learned Arbitral Tribunal and in the Impugned Order, the Learned Arbitral Tribunal has clearly reiterated that this is a facet of settlement of partnership accounts of Shree, and by itself does not lend privity between Sakshi and Shree or between Sakshi, More and Rajpurohit to have their disputes adjudicated by arbitration in terms of the arbitration agreement governing the partnership deed constituting Shree.

31. Rajpurohit has taken accountability for these transactions in his Written Statement and has committed to factor that into the drawing up of accounts of the partnership firm. The Learned Arbitral Tribunal has held that the transfer of funds to Sakshi and return of a part by Sakshi would not make Sakshi privy to the arbitration agreement as a veritable party. This is a logical and fair conclusion that is not perverse to warrant interference. Indeed, Sakshi is but a partnership firm of Rajpurohit and his wife Neema. Here too, More contends that he was always under the impression that Sakshi was a proprietorship of Rajpurohit. If that were so, the transfer to Sakshi would not make that partnership firm a veritable party to the arbitration agreement, when More had always thought of the transfers as being acceptable as if they were to Rajpurohit. In any case, Rajpurohit has admitted to being accountable for these transactions and these would form part of the accounts being drawn up,

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since the dispute is, in fact, over the accounts of Shree, the partnership between More and Rajpurohit.

32. The next issue is about a transfer of funds of Rs.75 Lakhs from Shree to Rajpurohit. More claims that this transfer too is a fraud inasmuch as subsequently, funds have also been transferred by Rajpurohit to Neema and to Sakshi. The Learned Arbitral Tribunal has held that such subsequent transfers would not be adequate to bring Neema and Sakshi into the realm of veritable parties to the arbitration agreement. I cannot disagree with this view as being a perverse view. Here again, Rajpurohit stands behind the transfer of Rs. 75 Lakhs and the transfer of some amounts from Rajpurohit to Neema and to Sakshi would not make them veritable parties for no reason other than Neema being the wife and Sakshi being a partnership firm of husband and wife.

33. I must hasten to add that any comment in this judgement relates only to the element of impleadment and is not a comment on the merits of these facets in the final adjudication on merits. The point is that the transactions, as indicated in the request for amendments, in which the request for impleadment is embedded, do not make out a case for holding that Neema and Sakshi are necessary parties and indeed veritable parties to the arbitration agreement. If the contention is that monies belonging to Shree have found

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their way to related parties of Rajpurohit and a tracing action is necessary, it begs the question as to whether these parties can be said to be in substance, partners of Shree to warrant such tracing action to be subject matter of the arbitration agreement. On the other hand, regardless of where the funds have gone from Rajpurohit, if he is accountable for the funds and this is factored into the drawing up of accounts, Neema and Sakshi would not be necessary parties at all (leaving out the issue of whether they are veritable parties).

34. Therefore, when one examines the approach of the Learned Arbitral Tribunal and the findings in this regard, based on the facts and circumstances adjudicated, I am not persuaded that the view taken by the Learned Arbitral Tribunal is of a nature that warrants interference in the appellate review under Section 37 of the Act.

35. There is another element involved. The aforesaid funds movements took place in 2010. Arbitration proceedings began in 2012. Until now there has been no attempt to rely on these elements to seek impleadment of Neema and Sakshi as veritable parties. Criminal proceedings too are underway between the parties. That may be continued uninfluenced by the dispute over partnership accounts and accountability of partners to the partnership. To seek impleadment in November 2024 for facts that are said to have become known much earlier and that too in reliance upon the suspension of limitation

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driven by the Covid-19 Pandemic, does not appear to be reasonable, and appears to be an afterthought to expand the pain points in the arbitration proceedings conducted over nearly a decade and half. I comment no further since the Learned Arbitral Tribunal has refrained from ruling on limitation at this stage and has taken the view that the parties sought to be added are not veritable parties, and therefore has not commented on limitation.

36. More had stated in the original Statement of Claim that he would not make Neema and another third party – one Mr. Bafna (from whom another land parcel had been bought by the parties) as parties to the arbitration and would proceed against them separately and through criminal proceedings. Such proceedings have indeed been initiated and pursued. The issue of whether transactions relating to the additional land parcel are even amenable to the arbitration agreement in the partnership deed of Shree has been kept open.

37. In the overall analysis, while the Petition challenging the acceptance of the plea by Rajpurohit, Neema and Sakshi that the Learned Arbitral Tribunal does not have jurisdiction over them is maintainable, on facts and on merits of the acceptance of such plea, no case is made out for interference with the decision not to make them veritable parties.

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38. Therefore, the captioned Section 37 Petition is ***finally disposed of*** without any interference. The costs for this round of litigation shall be taken into account by the Learned Arbitral Tribunal when it considers costs in the course of final adjudication of the arbitration proceedings.

39. All actions required to be taken pursuant to this order, shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN J.]

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