



2026:AHC-LKO:65119-DB

AFR

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

SPECIAL APPEAL No. - 278 of 2026

Shri Colonizers and Developers Pvt. Ltd. Thru. Director and
another

.....Appellant(s)

Versus

Abha Gupta

.....Respondent(s)

Counsel for Appellant(s)	: Rajeev Sharan, Amal Rastogi, Devesh Bahadur Singh
Counsel for Respondent(s)	: Anurag Tyagi,

Along with :

Special Appeal Defective No. 430 of 2026:

1. Colonizers and Developers Pvt. Ltd. Thru. its Director and
another

Versus

Abha Gupta Thru. Her Power of Attorney Holder Deepak
Khemani

Judgment reserved on:29.07.2026

Judgment delivered on:16.09.2026

Court No. - 1

**HON'BLE RAJAN ROY, J.
HON'BLE MANJIVE SHUKLA, J.**

(Per: Rajan Roy, J.)

1. Heard Shri Pritish Kumar, learned Senior Counsel assisted
by Shri Rajeev Sharan along with Shri Amal Rastogi, Ms. Anchal
Kushwaha and Shri Devesh Bahadur Singh, learned counsel for

the appellants and Shri Pankaj Kumar Singh, learned counsel for the respondent.

2. These are two special appeals under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952 challenging two separate orders dated 12.05.2026 and 11.07.2025 passed in same proceedings under Section 36 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act, 1996') by a Single Judge of this Court.

3. Learned counsel for the respondent has raised an objection about the very maintainability of these special appeals in view of Section 5 and 37 and other provisions of the Act, 1996 and the judgment of Hon'ble the Supreme Court in this regard. He has placed reliance upon decisions of the Supreme Court reported in ***(2011) 8 SCC 333; Fuerst Day Lawson Limited Vs. Jindal Exports Limited, 2025 SCC OnLine SC 2502; Bharat Kantilal Dalal (Dead) through LR. Vs. Chetan Surendra Dalal and Ors., (2017) 14 SCC 225; Union of India Vs. Simplex Infrastructures Limited, 2026 SCC OnLine SC 1001; Madhya Pradesh Road Development Corporation Limited Vs. Jabalpur Corridor Private Limited, (2020) 10 SCC 1; Government of India Vs. Vedanta Limited and Ors., (2006) 13 SCC 322; Paramjeet Singh Patheja Vs. ICDS Ltd.*** A Division Bench Judgment of Himanchal Pradesh High Court rendered in ***LPA No. 58 of 2017; M/s Utkarsh Apparels and Anr. Vs. M/s Vinnsome Textiles Industries Ltd.*** decided on 02.08.2017 has also been relied.

4. The respondent's counsel Shri Pankaj Kumar Singh also relied upon decisions reported in **1961 SCC OnLine SC 344; Union of India Vs. Mohindra Supply Co., (2024) 6 SCC 1; Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, (2017) 2 SCC 37; Mahanagar Telephone Nigam Limited Vs. Applied Electronics Limited, (2013) 7 Bombay CR 264; Masusmi Sa Investment Llc Vs. Keystone Realtors Private Limited and Ors., 1991 (1) SCC 193; Sushil Kumar Mehta Vs. Govind Ram Bohra, (2016) 14 SCC 49; Satyendra Kumar and Ors. Vs. Raj Nath Dubey and Ors., 2011 SCC OnLine Bombay 1379; Jet Airways (India) Limited Vs. Mr. Subrata Roy Sahara and Ors., (2022) 1 SCC 209; Amazon.Com N V Investment Holdings LLC Vs. Future Retail Limited and Ors.**

5. Shri Pritish Kumar, learned Senior Counsel appearing for the appellants on the other hand contended that the question of maintainability of an appeal arising out of proceedings under Section 36 of the Act, 1996 was considered in the earlier round of litigation between the same parties arising out of the same proceedings under Section 36 of the Act, 1996 in Special Appeal No. 394 of 2025 and this Court held the appeal to be maintainable which was not put to challenge by respondent, therefore, according to him, this plea was not open to the respondent in a subsequent special appeal arising from the same proceedings in view of the bar of res judicata/ constructive res judicata. In support

of the plea of bar of res judicata/ constructive res judicata the appellant's counsel relied upon the judgments reported in **2018 (16) SCC 228; Canra Bank Vs. N.G. Subbaraya Setty** and **AIR 1953 SC 65; Mohanlal Goenka Vs. Benoy Krishna Mukherjee**. Reliance was also placed upon another judgment reported in **(2002) 5 SCC 510; ITI Limited Vs. Siemens Public Communications Network Ltd., (2022) 9 SCC 225; Jamia Masjid Vs. Sri K.V. Rudrappa (Since Dead) by Legal Representatives and Ors.**

6. In support of his submissions regarding maintainability of the special appeals reliance was also placed by Shri Prithish Kumar, learned Senior Counsel upon the judgments of the Supreme Court of India reported in **(2004) 11 SCC 672; P.S. Sathappan Vs. Andhra Bank Ltd.** and **2002 SCC OnLine SC 599; ITI Limited Vs. Siemens Public Communications Network Ltd.**

7. In the context of maintainability of the appeals Shri Prithish Kumar, learned Senior Counsel appearing for the appellants also contended that impugned order is not an order made under the Arbitration and Conciliation Act, 1996. In this regard he invited our attention to Section 32 of the Act, 1996 to submit that the arbitration proceedings stand concluded /terminated by rendering of the final arbitral award, therefore, in any proceedings thereafter such as under Section 36 of the Act, 1996, if an order is passed, it can not be treated as an order in the arbitral proceedings so as to

attract the provisions of Arbitration and Conciliation Act, 1996. Even in this regard he invited our attention to Section 36 to contend that such an award is to be enforced in accordance with the provisions of the Code of Civil Procedure in the same manner, as if, it were a decree of the Court. He submitted that the award is to be treated as a decree of the Court and accordingly Order 21 CPC applies for execution of the award. The execution takes place under the aforesaid provisions of CPC and not under the Act, 1996. According to him, there is no statute which excludes an intra Court appeal against such an order. In this very context he relied upon the judgments of the Supreme Court of India reported in **(2018) 3 SCC 622; Sundram Finance Limited Vs. Abdul Samad and Anr.** and **AIR 2017 SC 3756; Punjab State Civil Supplies Corporation Ltd. Anr. Vs. M/s Atwal Rice and General Mills** to contend that the Code of Civil Procedure was applicable to execution of arbitral award and the award is a decree and is to be executed as such, therefore, execution is not under the Act, 1996 but under Order XXI CPC.

8. It was also his contention that res judicata operates in personam, therefore, correctness of earlier judgment is immaterial. He placed reliance upon the judgment reported in **2026 INSC 116; Eminent Colonizers Pvt. Ltd. Vs. Rajasthan** and the case of **Mohanlal Goenka** (supra). He also referred to the judgments reported in **AIR 1966 SC 1061; State of West Bengal Vs. Hemant Kumar Bhattacharjee, AIR 1960 SC 941;**

Satyadhyan Ghosal Vs. Deorajin Debi, (1976) 4 SCC 66; Y.B. Patil Vs. Y. L. Patil, (2005) 1 SCC 787; Bhanu Kumar Jain Vs. Archana Kumar to contend that the res judicata and issue estoppel apply at different stages of the same proceedings and that even an erroneous decision on a question of law operates as res judicata between the parties.

9. It was also his submission that the Act, 1996 is silent as to the availability of any remedy against an order passed under Section 36 of the Act, 1996, therefore, the general rules or procedure applicable to the High Court before which such application under Section 36 is maintainable would apply and as under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952 an intra court appeal is maintainable against the judgment of learned Single Judge and the case at hand does not fall in any of the exclusion clauses mentioned therein, therefore, the appeal is maintainable just as in the earlier round of litigation between the parties it was held to be maintainable. In this regard he relied upon decisions reported in ***AIR 1953 SC 357; National Sewing Thread Co. Vs. James Chadwick and Bros., (2003) 3 SCC 309; Subal Paul Vs. Malina Paul, (2002) 3 SCC 705; Sharda Devi Vs. State of Bihar, (1998) 1 SCC 500; Vinita M. Khanolkar Vs. Pragna M. Pai and (2002) 5 SCC 510; ITI Limited Vs. Siemens Public Communications Network Ltd.*** He also relied upon a decision of Delhi High Court reported in ***2023 DHC 3426 DB; Resilient Innovations (P) Ltd. Vs. Phonepe (P) Ltd.***

10. The learned counsel for the respondent responded by submitting that there is no question of res judicata or constructive res judicata on a point of jurisdiction and pure point of law. The fact that the earlier judgment was not challenged by the respondent would only mean that the said judgment especially its operative part has attained finality on points of merit involved therein but it does not mean that the point of lack of jurisdiction in this Court to entertain a special appeal under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952 and the point of law involved in the this regard, can not be raised in these subsequent appeals.

11. First and foremost we are required to consider the bar of res judicata/ constructive res judicata as argued by Shri Prithish Kumar, learned Senior Counsel appearing for the appellants. In this context, we may point out that this is not a case which involves an objection regarding lack of territorial jurisdiction but the objection raised by the respondent is with regard to the very maintainability of these appeals under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952, meaning thereby, the forum itself is not available and the appeal itself does not lie. In this context we may refer to Para 5 of the very decision cited by the learned counsel for the appellants i.e. in the case of **Canara Bank** (supra) which reads as under:-

“5. Res judicata is, thus, a doctrine of fundamental importance in our legal system,

though it is stated to belong to the realm of procedural law, being statutorily embodied in Section 11 of the Code of Civil Procedure, 1908. However, it is not a mere technical doctrine, but it is fundamental in our legal system that there be an end to all litigation, this being the public policy of Indian law. The obverse side of this doctrine is that, when applicable, if it is not given full effect to, an abuse of process of the court takes place. However, there are certain notable exceptions to the application of the doctrine. One well-known exception is that the doctrine cannot impart finality to an erroneous decision on the jurisdiction of a court. Likewise, an erroneous judgment on a question of law, which sanctions something that is illegal, also cannot be allowed to operate as res judicata. This case is concerned with the application of the last mentioned exception to the rule of res judicata.....”

12. We may also fruitfully refer to Para 34 of the same report, wherein, the law on the subject of res judicata/ constructive res judicata has been summarized by the Supreme Court. It reads as under:-

“34. Given the conspectus of authorities that have been referred to by us hereinabove, the law on the subject may be stated as follows:

34.1. The general rule is that all issues that arise directly and substantially in a former suit or proceeding between the same parties are res judicata in a subsequent suit or proceeding between the same parties. These would include issues of fact, mixed questions of fact and law, and issues of law.

34.2. To this general proposition of law, there are certain exceptions when it comes to issues of law:

34.2.1. Where an issue of law decided between the same parties in a former suit or proceeding relates to the jurisdiction of the court, an erroneous decision in the former suit or proceeding is not res judicata in a subsequent suit or proceeding between the same parties, even where the issue raised in the second suit or proceeding is directly and substantially the same as that raised in the former suit or proceeding. This follows from a reading of Section 11 of the Code of Civil Procedure itself, for the Court which decides the suit has to be a court competent to try such suit. When read with Explanation I to Section 11, it is obvious that both the former as well as the subsequent suit need to be decided in courts competent to try such suits, for the “former suit” can be a suit instituted after the first suit, but which has been decided prior to the suit which was instituted earlier. An erroneous decision as to the jurisdiction of a court cannot clothe that court with jurisdiction where it has none. Obviously, a civil court cannot send a person to jail for an offence committed under the Penal Code. If it does so, such a judgment would not bind a Magistrate and/or Sessions Court in a subsequent proceeding between the same parties, where the Magistrate sentences the same person for the same offence under the Penal Code. Equally, a civil court cannot decide a suit between a landlord and a tenant arising out of the rights claimed under a Rent Act, where the Rent Act clothes a special court with jurisdiction to decide such suits. As an example, under Section 28 of the Bombay Rent Act, 1947, the Small Cause Court has exclusive jurisdiction to hear and decide proceedings between a landlord and a tenant in respect of rights which arise out of the Bombay Rent

Act, and no other court has jurisdiction to embark upon the same. In this case, even though the civil court, in the absence of the statutory bar created by the Rent Act, would have jurisdiction to decide such suits, it is the statutory bar created by the Rent Act that must be given effect to as a matter of public policy. [See, Natraj Studios (P) Ltd. v. Navrang Studios at SCR p. 482]. An erroneous decision clothing the civil court with jurisdiction to embark upon a suit filed by a landlord against a tenant, in respect of rights claimed under the Bombay Rent Act, would, therefore, not operate as res judicata in a subsequent suit filed before the Small Cause Court between the same parties in respect of the same matter directly and substantially in issue in the former suit.

34.2.2. *An issue of law which arises between the same parties in a subsequent suit or proceeding is not res judicata if, by an erroneous decision given on a statutory prohibition in the former suit or proceeding, the statutory prohibition is not given effect to. This is despite the fact that the matter in issue between the parties may be the same as that directly and substantially in issue in the previous suit or proceeding. This is for the reason that in such cases, the rights of the parties are not the only matter for consideration (as is the case of an erroneous interpretation of a statute inter partes), as the public policy contained in the statutory prohibition cannot be set at naught. This is for the same reason as that contained in matters which pertain to issues of law that raise jurisdictional questions.* We have seen how, in Natraj Studios, it is the public policy of the statutory prohibition contained in Section 28 of the Bombay Rent Act that has to be given effect to. Likewise, the public policy contained in other statutory prohibitions, which need not necessarily go to

jurisdiction of a court, must equally be given effect to, as otherwise special principles of law are fastened upon parties when special considerations relating to public policy mandate that this cannot be done.”

13. The above quoted paragraphs of **Canara Bank** (supra) leave no doubt that there is no question of res judicata/ constructive res judicata on the issue of jurisdiction and point of law as is involved in these cases. The objection raised by the respondent in these appeals was not raised in the earlier round of litigation which does not mean that it can not be raised in these appeals, as, the fundamental issue of jurisdiction of this Court to entertain such an appeal under the Rules of the Court, 1952 is involved which is not only a question of jurisdiction but also purely a point of law. The legal position is settled that even consent can not confer jurisdiction upon a Court. The earlier decision can not be applied on the pretext of the principle of res judicata/ constructive res judicata to vest this Court with jurisdiction if it otherwise does not have in law. It is a settled exception to the application of the principle of res judicata/ constructive res judicata that it does not apply where the point of jurisdiction and/or point of law, is involved. This is even if this issue arises at subsequent stage of the same proceedings.

14. No doubt even an incorrect decision is binding between the parties but an incorrect decision can not be equated with a decision rendered without jurisdiction as was observed by the Supreme Court in the case of **Hemant Kumar Bhattacharjee**

(supra). The question herein is of inherent lack of jurisdiction to entertain these appeals. The answer to this question is not dependent on questions of fact nor on mixed questions of fact and law. It is a purely legal issue touching upon the very jurisdiction of this Court to entertain these appeals. The issue of jurisdiction is not related to the rights of the parties on merits. For application of the principle of res judicata/ constructive res judicata one of the prerequisites or conditions is that the Court which passed the earlier order whether in a former suit or in an earlier stage of the same suit must be a Court competent in that regard **(Sheodan Singh Vs. Smt. Daryao Kunwar** reported in **AIR 196 SC 1332**). It is also not an issue involving a question of law touching upon the rights of the parties rather it is a question of jurisdiction unrelated to the rights of the parties whether on facts or on law. In this regard we may also refer to a decision of Hon'ble the Supreme Court in the case of **Smt. Isabella Johnson Vs. M.A. Susai** reported in **(1991) 1 SCC 494**, wherein the judgment in **Mathura Prasad Bajoo Jaiswal and Ors. Vs. Dossibai N.B. Jeejeebhoy** reported in **(1970) 3 SCR 830** was relied and in Para nos. 5 and 6 it was held as under:-

“5. Learned counsel for the appellant submitted that the learned Judge of the High Court was in error, as the earlier decisions of the Rent Controller to the effect that it was the City Civil Court and not the Rent Controller who had the jurisdiction to entertain the suit for eviction filed by

the appellant against the respondent, constituted res judicata between the parties on the question of jurisdiction. It was submitted by him that, even if that decision was wrong, the issue of jurisdiction was finally decided between the parties and that decision was that it was the Civil Court and not the Rent Controller that had the jurisdiction to entertain and dispose of the suit for eviction. He further submitted that the respondent could not be permitted to take inconsistent pleas as he was barred by the principles of estoppel from taking up the plea before the Civil Court that it was the Rent Controller who had the exclusive jurisdiction to entertain the suit. He placed reliance on a decision rendered by a Division Bench comprising two learned Judges of this Court in Avtar Singh v. Jagjit Singh which took the view that the Civil Court's decision regarding lack of jurisdiction will operate as res judicata in a subsequent suit. In that case the Civil Court declined jurisdiction. The Civil Court took the view that it had no jurisdiction to try the suit in question and directed the return of the plaint for representation to the appropriate Revenue Court. When the claim was filed in the Revenue Court, the court took the view that it had no jurisdiction to try the claim. Thereupon, a suit was again instituted in the Civil Court for the same relief. This suit failed throughout on the ground of res judicata. The High Court affirmed the dismissal and the Division Bench of this Court took the view that the High Court was right in taking the view that the principles of res judicata were applicable to the issue of jurisdiction. In our opinion, the contention

of learned counsel for the appellant cannot be upheld. We find that in Mathura Prasad Bajoo Jaiswal v. Dossibai N.B. Jeejeebhoy a bench comprising three learned Judges of this Court has taken the view that a decision on the question of jurisdiction of the court or a pure question of law unrelated to the right of the parties to a previous suit, is not res judicata in the subsequent suit. The court observed: (SCC p. 619, para 11)

“It is true that in determining the application of the rule of res judicata the court is not concerned with the correctness or otherwise of the earlier judgment. The matter in issue, if it is one purely of fact, decided in the earlier proceeding by a competent court must in a subsequent litigation between the same parties be regarded as finally decided and cannot be reopened. A mixed question of law and fact determined in the earlier proceeding between the same parties may not, for the same reason, be questioned in a subsequent proceeding between the same parties. But, where the decision is on a question of law, i.e. the interpretation of a statute, it will be res judicata in a subsequent proceeding between the same parties where the cause of action is the same, for the expression “the matter in issue” in Section 11, Code of Civil Procedure means the right litigated between the parties, i.e., the facts on which the right is claimed or denied and the law applicable to the determination of that issue. Where, however, the question is

one purely of law and it relates to the jurisdiction of the court or a decision of the court sanctioning something which is illegal, by resort to the rule of res judicata a party affected by the decision will not be precluded from challenging the validity of that order under the rule of res judicata, for a rule of procedure cannot supersede the law of the land."

6. The same view has been reiterated by a bench comprising three learned Judges of this Court in Sushil Kumar Mehta v. Gobind Ram Bohra. We find that the decision of three learned Judges of this Court in Mathura Prasad Bajoo Jaiswal v. Dossibai N.B. Jeejeebhoy has not been noticed at all by the Division Bench comprising two learned Judges of this Court which delivered the judgment in Avtar Singh v. Jagjit Singh and hence, to the extent, that the judgment in Avtar Singh case takes the view that the principle of res judicata is applicable to an erroneous decision on jurisdiction, it cannot be regarded as good law. In our opinion a court which has no jurisdiction in law cannot be conferred with the jurisdiction by applying principles of res judicata. It is well settled that there can be no estoppel on a pure question of law and in this case the question of jurisdiction is a pure question of law."

15. The case of **Mohanlal Goenka** (supra) relied by Shri Prithish Kumar, learned Senior was not one of inherent lack of jurisdiction but one where the decree passed by the Calcutta High Court on its original side was transferred for execution to the Court of sub-

ordinate Judge Asansol with proper certified copy of the decree or order of transmission. The execution application was dismissed for default and a certificate was sent under Section 41 CPC stating that the execution case was dismissed for default without transmitting the decree or covering letter sent by the High Court. The Decree Holder again applied for execution. It was accordingly executed. Then, an application to set- aside the sale was made under Order 21 Rule 90 CPC on the ground that the decree is a nullity and Court had no jurisdiction to execute the decree. While negating the contention it was held that since decree sent was not transmitted it would be regarded as a fresh application for execution and therefore, executing Court had jurisdiction and the decree was not a nullity. It was not a case of inherent lack of jurisdiction as has also been observed in a subsequent decision reported in **1991 (1) SCC 193 (Para 25); Sushil Kumar Mehta Vs. Govind Ram Bohra**. The facts of the case in **Mohanlal Goenka's case** (supra) were different to the case at hand and the issue involved herein.

16. We may even at the cost of repetition point out that the plea which has been raised herein by the respondent based on Section 5, 37 and other provisions of the Act, 1996 and the decisions relied upon by them were not raised in the earlier round of litigation and therefore, they were not considered. This Court only considered the provision of Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952, therefore, there was no consideration of

these issues in the earlier round of litigation, though, the point of jurisdiction was decided *albeit* only after going through the provisions of Chapter VIII Rule 5 of the Rules, 1952 and not the provisions of the Act, 1996 nor the decisions on which reliance has been placed now by the respondent's counsel.

17. In view of the above discussion on the question of application of principle of res judicata/ constructive res judicata and the precedents cited by us, we hold that in the event this Court finds that it lacks inherent jurisdiction to hear these appeals, then, merely because of an erroneous decision having been passed earlier in a special appeal between the parties, even if arising out of same proceedings, on a pure point of law and point of jurisdiction unrelated to the rights of the parties, it would not bar the respondent from raising such plea in these appeals nor would it prevent the Court from deciding it.

18. We now come to the question of maintainability of these appeals i.e. the issue of jurisdiction. In this context we may refer to a decision of Supreme Court of India rendered in the case of ***Fuerst Day Lawson Limited (supra)***, wherein the question as to whether the Act, 1996 is a self-contained Code, if so, whether a Letter Patent Appeal in the High Court would be maintainable or not, came up for consideration, albeit, in the context of a foreign award which is governed by Part -II of the Act, 1996. Para 3 of the said judgment is relevant in this regard. It reads as under:-

“3. A correct answer to both the questions would depend upon how the 1996 Act is to be viewed. Do the provisions of the 1996 Act constitute a complete code for matters arising out of an arbitration proceeding, the making of the award and the enforcement of the award? If the answer to the question is in the affirmative then, obviously, all other jurisdictions, including the letters patent jurisdiction of the High Court would stand excluded but in case the answer is in the negative then, of course, the contention of Mr. Sundaram must be accepted.”

19. An issue arose in the said case as to the applicability of the decision of a Four Judges Bench of the Supreme Court of India in the case of ***Union of India Vs. Mohindra Supply Co.*** reported in ***AIR 1962 SC 256***, wherein the provisions of Section 39 of the Arbitration Act, 1940 were considered and with reference to Sub-section 2 thereof it was held that a Letter Patent Appeal would not lie. In this context, the observations of the Supreme Court in the case of ***Fuerst Day Lawson Limited (supra)*** in Paragraphs 38, 39 and the contentions of the rival parties before the Supreme Court as noticed in Para 42, 43, as also the subsequent observations in Para 52, are relevant. They are as under:-

“38. In Mohindra Supply Co. [AIR 1962 SC 256 : (1962) 3 SCR 497] , a Bench of four Judges of this Court held that a letters patent appeal against an order passed by a Single Judge of the High Court on an appeal under Section 39(1) of the 1940 Act was barred in terms of sub-

section (2) of Section 39. This decision is based on the bar against further appeals as contained in sub-section (2) of Section 39 of the 1940 Act and, therefore, it may not have a direct bearing on the question presently under consideration.

39. *More to the point are two later decisions. In Gourangalal Chatterjee [(1993) 3 SCC 1] , a Bench of two Judges of this Court held that an order, against which no appeal would lie under Section 39(1) of the 1940 Act, could not be taken in appeal before the Division Bench of the High Court under its Letters Patent. The same view was reaffirmed by a Bench of three Judges of this Court in Aradhana Trading Co. [(2002) 4 SCC 447]*

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42. *Mr Sundaram submitted that Section 50, unlike Section 39 of the previous Act and Section 37 of the current Act does not have the words “(and from no others)” and that, according to him, made all the difference. He contended that the omission of the words in parenthesis was significant and it clearly pointed out that unlike Section 37, even though an order was not appealable under Section 50, it would be subject to appeal under the Letters Patent of the High Court. At any event the decisions rendered under Section 39 of the 1940 Act would have no application in a case relating to Section 50 of the 1996 Act.*

43. *Mr Dave, in reply submitted that the words “(and from no others)” occurring in Section 39 of the 1940 Act and Section 37 of the 1996 Act were actually superfluous and seen, thus, there would be no material difference between the provisions of Section 39 of the 1940 Act or Section 37 of the 1996 Act and Section 50 of the 1996 Act and all the decisions rendered on Section 39 of the 1940 Act will apply with full force to cases arising under Section 50 of the 1996 Act.*

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52. *Having regard to the grammatical use of brackets or parentheses, if the words “(and from no others)” occurring in Section 39 of the 1940 Act or Section 37 of the 1996 Act are viewed as “an explanation or afterthought” or extra information separate from the main context, then, there may be some substance in Mr Dave's submission that the words in parenthesis are surplusage and in essence the provisions of Section 39 of the 1940 Act or Section 37 of the 1996 Act are the same as Section 50 of the 1996 Act. Section 39 of the 1940 Act says no*

more and no less than what is stipulated in Section 50 of the 1996 Act. But there may be a different reason to contend that Section 39 of the 1940 Act or its equivalent Section 37 of the 1996 Act are fundamentally different from Section 50 of the 1996 Act and hence, the decisions rendered under Section 39 of the 1940 Act may not have any application to the facts arising under Section 50 of the 1996 Act. But for that we need to take a look at the basic scheme of the 1996 Act and its relevant provisions.”

20. Ultimately, the Supreme Court of India considered the scheme of the Act, 1996 and the nature of the character of the Act, 1996 which was a self-contained and exhaustive Code and opined that a Letter Patents Appeal would not lie. In this regard reliance was placed by the Supreme Court upon the earlier decision in ***Mohindra Supply Co.’s case (supra)***, wherein it had been held that the Act, 1940 was a self-contained and exhaustive Code. We may in this regard refer to Para 88 to 91 of the report in ***Fuerst Day Lawson Limited (supra)***. They are as under:-

“88.Mohindra Supply Co. [AIR 1962 SC 256 : (1962) 3 SCR 497] was last referred in a Constitution Bench decision of this Court in P.S. Sathappan [(2004) 11 SCC 672] , and the way the Constitution Bench understood and interpreted Mohindra Supply Co. [AIR 1962 SC 256 : (1962) 3 SCR 497] would be clear from the following para 10 of the judgment: (P.S.

Sathappan case [(2004) 11 SCC 672] , SCC pp. 689-90)

*“10. ... The provisions in the Letters Patent providing for appeal, insofar as they related to orders passed in arbitration proceedings, were held to be subject to the provisions of Sections 39(1) and (2) of the Arbitration Act, as the same is a self-contained code relating to arbitration.”
(emphasis supplied)*

89. *It is, thus, to be seen that Arbitration Act, 1940, from its inception and right through to 2004 (in P.S. Sathappan [(2004) 11 SCC 672]) was held to be a self-contained code. Now, if the Arbitration Act, 1940 was held to be a self-contained code, on matters pertaining to arbitration, the Arbitration and Conciliation Act, 1996, which consolidates, amends and designs the law relating to arbitration to bring it, as much as possible, in harmony with the UNCITRAL Model must be held only to be more so. Once it is held that the Arbitration Act is a self-contained code and exhaustive, then it must also be held, using the lucid expression of Tulzapurkar, J., that it carries with it “a negative import that only such acts as are mentioned in the Act are permissible to be done and acts or things not mentioned therein are not permissible to be done”. In other words, a letters*

patent appeal would be excluded by the application of one of the general principles that where the special Act sets out a self-contained code the applicability of the general law procedure would be impliedly excluded.

90. We, thus, arrive at the conclusion regarding the exclusion of a letters patent appeal in two different ways; one, so to say, on a micro basis by examining the scheme devised by Sections 49 and 50 of the 1996 Act and the radical change that it brings about in the earlier provision of appeal under Section 6 of the 1961 Act and the other on a macro basis by taking into account the nature and character of the 1996 Act as a self-contained and exhaustive code in itself.

91. In light of the discussions made above, it must be held that no letters patent appeal will lie against an order which is not appealable under Section 50 of the Arbitration and Conciliation Act, 1996."

21. Much emphasis was led by the learned Senior Counsel appearing for the Appellants Shri Prithvi Kumar that **Fuerst Day Lawson Limited (supra)** was a case pertaining to a foreign award referable to Part II of the Act, 1996 but for the reasons discussed in the said decision this by itself can not be a ground for not applying the law laid down therein to the facts and issues involved in these cases pertaining to a domestic award, for the reason, the Supreme Court both in **Mohindra Supply Co. (supra)**

and ***Fuerst Day Lawson Limited (supra)*** have held that the earlier Act, 1940 and the existing Act, 1996 are self-contained and exhaustive Code and based on the said line of reasoning also it has been held that a Letter Patent Appeal would not lie. We may further add that in fact the language used in Section 37 of the Act, 1996 expressly excludes an appeal other than the one mentioned therein and therefore, in that sense Section 37 imposes an explicit bar vis-a-vis the provisions contained in Section 50 which were considered in the case of ***Fuerst Day Lawson Limited (supra)***, and as in spite of it the Supreme Court elucidated the law as regards maintainability of Letter Patent Appeal as aforesaid, therefore, the ratio contained therein will apply with all the more vigour to the case at hand which is governed by Section 37 of the Act, 1996 as the provision involved herein i.e. Section 37 is stricter and more explicit than the one which was considered in ***Fuerst Day Lawson Limited (supra)***.

22. As the case at hand pertains to a domestic award, Part- I of the Act, 1996 applies we now consider Section 5 thereof, which reads as under:-

“5. Extent of judicial intervention.- Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.”

23. In this very context we may refer to Section 37 of the Act, 1996 which is contained in Part- I of the Act, 1996 which reads as under:-

“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 authorised by law to hear appeals from original decrees of the Court passing the order, namely:-

(a) refusing to refer the parties to arbitration under section 8;

(b) granting or refusing to grant any measure under section 9;

(c) setting aside or refusing to set aside an arbitral award under section 34.]

(2) An 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) granting or refusing to grant an interim measure under section 17.

(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.”

24. On a bare reading of Section 37(1) of the Act, 1996 it is evident that **notwithstanding anything contained in any other law for the time being in force**, an appeal shall lie from the orders mentioned therein **and from no other orders** to the Court authorised by law to hear appeals from original decrees of the

Court passing the order. Now the orders referred therein against which an appeal would lie under Section 37 of the Act, 1996 relate to Section 8, Section 9, Section 34, Section 16 and Section 17. There is no reference to any order passed under Section 36 in Section 37 of the Act, 1996, meaning thereby, no appeal is envisaged against an order passed under Section 36 under Section 37 of the Act, 1996. Not only this, the use of the words -**“and from no other orders”**, [in Section 37(1)] leaves no doubt about the intention of the Legislature that an appeal shall lie only from such orders as are mentioned therein and from no others. This is further qualified by the opening words to the effect- **“notwithstanding anything contained in any other law for the time being in force”**, meaning thereby, Section 37 explicitly and in no certain terms make it clear that except for the orders mentioned therein none other would be appealable. When Section 37 is read with Section 5 the irresistible conclusion, especially in view of the settled legal position that the Act, 1996 is a complete and exhaustive code in itself prescribing specific remedies and not only this but also explicitly excluding any other remedy not prescribed under the Act, 1996 especially in respect of the provision contained in Part– I, is that an appeal under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952 against an order passed under Section 36, if entertained, would be against the grain of the Act, 1996, especially, Section 5 read with Section 37 thereof.

25. These aspects were not considered in the earlier appeal between the parties bearing No. 394 of 2025 decided on 09.10.2025. We have already observed based on binding precedents that an erroneous decision between the same parties on point of jurisdiction or pure question of law does not attract the bar of res judicata/ constructive res judicata.

26. We may in this very context refer to a recent decision on the Supreme Court of India rendered in the case of ***Bharat Kantilal Dalal (supra)***, wherein certain stay orders passed by the Division Bench of the Bombay High Court in Letter Patents Appeal were assailed on the ground of non maintainability of such Letter Patents Appeal in view of Section 5, 36, 37 and 50 of the Act, 1996. Reliance was placed in support of this contention upon a decision of Supreme Court of India in ***Paramjeet Singh Patheja's case*** (supra). Para 10 of this report containing the submissions in this regard are quoted hereinbelow:-

“10. Learned Senior Counsel for the Appellant, while inviting the attention of this Court to Sections 5, 36, 37 and 50 of the Act, submitted that, against the orders dated 18.12.2014 passed by the learned Single Judge in the Chamber Summons, no Letters Patent Appeals lie, as the Act is a complete code in itself. In support of the aforesaid submissions, reliance has been placed on decisions of this Court in Paramjeet Singh Patheja v. ICDS Ltd., Fuerst Day Lawson Ltd. v. Jindal Exports Ltd., Union of India v. Simplex Infrastructures Ltd., Kandla Export Corporation and Anr. v. OCI Corporation and Anr., Sundaram Finance Ltd. v.

Abdul Samad and Anr., Amazon.Com NV Investment Holdings LLC v. Future Retail Ltd. and Ors., Noy Vallesina Engineering Spa v. Jindal Drugs Limited & Others, PASL Wind Solutions Private Limited v. GE Power Conversion India Private Limited⁸ and Electrosteel Steel Limited v. Ispat Carrier Private Limited⁹, and decisions of the Bombay High Court in Jet Airways (India) Ltd. v. Subrata Roy Sahara and Sushila Singhania v. Bharat Hari Singhania.”

27. Based on a discussion contained therein the Supreme Court observed in Para 19 of the judgment in ***Bharat Kantilal Dalal (supra)***, as under:-

“19. The Act is a self-contained code and is founded upon principles of party autonomy, expedition and finality. The legislative design of the Act restricts judicial interference. The orders of the learned Single Judge dated 18.12.2014, were passed in course of execution of arbitral award and are, therefore, traceable to the Act and not to CPC. The execution of the arbitral award is sought against the respondents in their capacity as executors of the aforesaid Will. The respondents step into the shoes of judgment debtor of the limited purpose of the execution. The Letters Patent Appeals filed by respondents were therefore not maintainable. The Division Bench of the High Court erred in admitting the appeals subject to maintainability of the same and in admitting the appeals without assigning any reasons.”

28. In Para 22 of the judgment in ***Bharat Kantilal Dalal (supra)*** the Supreme Court went on to conclude as under:-

“22. In view of foregoing discussion, impugned orders dated 06.03.2018 passed by the Division

Bench of the High Court of Bombay in Letters Patent Appeals, namely Appeals No.320 and 372 of 2015 are quashed and set aside. The aforesaid Letters Patent Appeals are dismissed as not maintainable."

29. The Letter Patent Appeals were held to be not maintainable for the reasons given therein.

30. The case at hand has also arisen from execution of proceedings under Section 36, therefore, the decision in ***Bharat Kantilal Dalal*** (supra) applies on all its fours to the case at hand. In the said case the decision of the Supreme Court of India in the case of ***Sundram Finance Limited*** (supra), on which heavy reliance was placed by the appellants' counsel, was also referred.

31. We may also in this very context refer to another decision of Supreme Court of India rendered in the case of ***(2017) 14 SCC 225; Union of India Vs. Simplex Infrastructures Limited*** wherein the question which came up for consideration was regarding maintainability of a Letter Patent Appeal before the High Court of Calcutta against an order passed by the learned Single Judge in proceedings under Section 34 condoning the delay in filing the petition. Hon'ble the Supreme Court referring to its judgment in ***Furest Day Lawson Ltd.*** (supra) held that the matter was squarely covered by it and that the High Court had erred in entertaining the appeal. It also referred to Section 37 of the Act, 1996 and observed that on a bare reading of the said provision it is noticed that the remedy of appeal has been provided only

against an order of setting aside or refusing to set aside an arbitral award under Section 34. No appeal is provided against an order passed by the Court of competent jurisdiction condoning the delay in filing the petition under Section 34 of the Act as such. The reasoning implicit therein is that if an appeal is not provided against any order under Section 37, then, the same would not be maintainable under any law considering the fact that the Act, 1996 has been held to be a complete and exhaustive code in itself and if it does not provide a remedy then the same can not be availed under any other other law. The ratio of the said judgment also applies to the case at hand in all its fours.

32. In this context we may also refer to another decision of Hon'ble the Supreme Court rendered in the case of ***Madhya Pradesh Road Development Corporation Limited (supra)***, wherein the Supreme Court examined the structure of the 1996 Act, especially, Section 5 thereof and referred to a decision of a seven Judges Bench in ***Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899*** reported in ***(2024) 6 SCC 1*** to emphasize and reaffirm the position of law with respect to the limited role of Courts in arbitration. It categorically observed that Section 5, beginning with a non obstante clause, manifests the legislative intent to restrict the role of Courts to only those instances which are expressly contemplated under Part- I of the 1996 Act. It went on to observe that while exercising any power under the

provisions of the 1996 Act it is the duty of the Court to ensure that the object of the said Act i.e. speedy resolution of disputes with minimal judicial interference is effectuated, and that intervention remains confined to circumstances where such support is indispensable for the arbitral process or there is perversity so manifest that it shocks the conscience of the Court. Most importantly, it observed in the context of interference with the arbitral award – **“the judicial interference with the arbitral award, if any, is provided for only under Section 34 and 37 of the 1996 Act.”** These observations are also helpful in answering the issue raised before us.

33. We may again refer to seven Judges Bench Judgment of the Supreme Court in ***Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899***, wherein, the Supreme Court considered the observations of a two judges Bench in ***Furest Day Lawson Ltd.*** (supra), with approval, wherein, it had been held that Letter Patents Appeal would be excluded by the application of one of the general principles that where the special Act sets out a self-contained code the applicability of general law procedure would be impliedly excluded, we may in this regard refer to Para 90, 91 and 92 of the Seven Judges Bench decision which read as under:-

“90. *In Girnar Traders (3) v. State of Maharashtra, a Constitution Bench of this Court observed that a self-*

contained code is a complete legislation with regard to the purpose for which it is enacted. Such a self-contained code provides for a complete machinery to deal with the purpose sought to be achieved by that law and its dependence on other legislations is either absent or minimal.

91. *A two-Judge Bench of this Court, in Fuerst Day Lawson Ltd. v. Jindal Exports Ltd., explained the nature of the Arbitration Act in the following terms: (SCC p. 371, para 89)*

“89. It is, thus, to be seen that the Arbitration Act, 1940, from its inception and right through to 2004 (in P.S. Sathappan was held to be a self-contained code. Now, if the Arbitration Act, 1940 was held to be a self-contained code, on matters pertaining to arbitration, the Arbitration and Conciliation Act, 1996, which consolidates, amends and designs the law relating to arbitration to bring it, as much as possible, in harmony with the UNCITRAL Model must be held only to be more so. Once it is held that the Arbitration Act is a self-contained code and exhaustive, then it must also be held, using the lucid expression of Tulzapurkar, J., that it carries with it “a negative import that only such acts as are mentioned in the Act are permissible to be done and acts or things not mentioned therein are not permissible to be done”. In other words, a letters patent appeal would be excluded by the application of one of the general principles that where the special Act sets out a self-contained code the applicability of the general law procedure would be impliedly excluded.”

92. *The Arbitration Act is a self-contained code inter alia with respect to matters dealing with appointment of arbitrators, commencement of arbitration, making of an award and challenges to the arbitral award, as well as execution of such awards. When a self-contained code sets out a procedure, the applicability of a general legal procedure would be impliedly excluded. Being a self-contained and exhaustive code on arbitration law, the Arbitration Act carries the imperative that what is permissible under the law ought to be performed only in the manner indicated, and not otherwise. Accordingly, matters governed by the Arbitration Act such as the arbitration agreement, appointment of arbitrators and competence of the Arbitral Tribunal to rule on its jurisdiction have to be assessed in the manner specified under the law. The corollary is that it is not permissible to do what is not mentioned under the Arbitration Act. Therefore, provisions of other statutes cannot interfere with the working of the Arbitration Act, unless specified otherwise."*

34. On a bare reading of the aforesaid quotation it is evident that the plea raised by the appellants' counsel that in the absence of any specific provisions in the Act, 1996, an intra court appeal would lie under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952 from an order passed under Section 36 of the Act, 1996 by a Single Judge, is not acceptable. It is not acceptable not only for the reasons already given with regard to the intention of the Legislature as contained in Section 5 and Section 37 which explicitly excludes any appeal other than the one permissible and prescribe under Section 37 of the Act, 1996 but, also on the

principle that the Act, 1996 being a self-contained and exhaustive code which sets out the procedure including on the subject of execution of awards and does not provide an appeal from an order passed in execution proceedings rather prohibits it, the applicability of a general legal procedure stand excluded. The observations in Para 92 of the aforesaid report conclusively answers the question. It is not permissible to do what is not mentioned under the Arbitration Act, 1992.

35. We may also refer to another decision of Supreme Court of India reported **(1993) 3 SCC 1; State of West Bengal Vs. M/s Gouranglal Chatterjee**, wherein the question of maintainability of a Letter Patent Appeal against an order passed under the Arbitration Act, 1940 came up for consideration and reference was made in this regard to the three Judge Bench decision in **Mohindra Supply Co.** (supra). Paragraph No. 3 and 4 of the said report are as under:-

“3. Section 39 of the Arbitration Act came up for consideration in Union of India v. Mohindra Supply Co. The Court after going into detail and examining various authorities given by different High Courts held that no second appeal lay under Section 39(2) against a decision given by a learned Single Judge under Section 39(1). In respect of the jurisdiction under Letters Patent the Court observed that since Arbitration Act was a consolidating and amending Act relating to arbitration it must be construed without any

assumption that it was not intended to alter the law relating to appeals. The Court held that in view of bar created by sub-section (2) of Section 39 debarring any second appeal from an order passed in appeal under sub-section (1) the 'conclusion was inevitable that it was so done with a view to restrict the right of appeal within strict limits defined by Section 39'. Therefore, so far the second part is concerned, namely, the maintainability of the appeal under Letters Patent it stands concluded by this decision.

4. The learned counsel for the appellant vehemently argued that since the decision by the Supreme Court was in respect of an appeal directed against an order passed by a learned Single Judge in exercise of appellate jurisdiction no second appeal lay but that principle could not be applied where the order of learned Single Judge was passed not in exercise of appellate jurisdiction but original jurisdiction. The argument appears to be without any substance as sub-section (1) of Section 39 which is extracted below:

"(1) An appeal shall lie from the following orders passed under this Act (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order—

(i) superseding an arbitration;

(ii) on an award stated in the form of a special case;

(iii) modifying or correcting an award;

(iv) filing or refusing to file an arbitration agreement;(v) staying or refusing to stay legal

proceedings where there is an arbitration agreement;

(vi) setting aside or refusing to set aside an award:

Provided that the provisions of this section shall not apply to any order passed by a Small Cause Court.

(2) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court."

provides that an appeal could lie only from the orders mentioned in the sub-section itself. Since the order passed by learned Single Judge revoking the authority of the Chief Engineer on his failure to act as an arbitrator was not covered in either of the six clauses mentioned in Section 39 it is obvious that no appeal could be filed against the order of the learned Single Judge."

36. The above quoted extract answers the issue involved in this appeal as provision of Section 39 of the 1940 Act was similar to Section 37 of the 1996 Act.

37. Yet another decision by a three Judges Bench of Supreme Court of India reported in **(2002) 4 SCC 447; Union of India and Ors. Vs. Aradhana Trading Company and Ors.**, wherein it was held albeit in the context of Section 39(1) of the Act, 1940, corresponding to Section 37(1) of the Act, 1996, that Letter Patent Appeal would not lie in view of the restrictions contained in Section 39(1) and 39(2). We may quote relevant extract of Para 13 of the said decision which is as under:-

“Normally, an appeal would be maintainable but there are two constraints as provided under the Special Act, namely, it should not be a second appeal as provided under sub-section (2) of Section 39 of the Act, which position is also clear in the case of Mohindra Supply Co. where it was held that the second appeal under Section 100 CPC or under the Letters Patent against an appellate order was barred by virtue of sub-section (2) of Section 39. Here we find that there is yet another constraint as provided under sub-section (1) of Section 39 of the Arbitration Act itself and it is emphatic too when it says that the appeal shall lie against the orders indicated in the provision and from no other order. Section 41 of the Arbitration Act makes the provisions of CPC applicable subject to the provisions of the Arbitration Act and the rules framed thereunder. Therefore, the nature of an order against which an appeal may lie must conform to the nature of the order as enumerated under sub-section (1) of Section 39 of the Arbitration Act. If it does not amount to such an order as enumerated under sub-section (1) of Section 39, the prohibition as contained in this sub-section (“against no other order”) itself, would become operative, subject to which alone provisions of CPC apply under Section 41 of the Act. In the facts of the present case we find that an order refusing to recall an order passed by the Court will not amount to refusal to set aside the award under clause (vi) of sub-section (1) of Section 39 of the Arbitration Act as no objections to set aside the award have ever been filed with or without application for condonation of delay, challenging the award. Admittedly, the appellant did not file any appeal against the order dated 27-1-1998. In these circumstances and in view of the provisions of the

Arbitration Act, the decision in the case of National Sewing Thread Co. Ltd. shall also not be applicable as in the Trade Marks Act with which the Court was dealing, did not have any provision like the one contained in sub-section (1) of Section 39 of the Arbitration Act restricting the right of appeal only in respect of certain nature of orders and prohibiting appeal against any other order whatsoever. Therefore, in the case of National Sewing Thread Co. Ltd. it was held that where a provision for appeal was made under Section 76(1) of the Trade Marks Act to the High Court, with nothing more, the other provisions relating to exercise of that jurisdiction by the High Court would be applicable. The case of National Sewing Thread Co. Ltd. is thus based on different provisions and is clearly distinguishable. The case in hand is covered by the decisions in the cases of Nilkantha and Mohindra Supply Co. both decided by Bench of four Judges which do not seem to have been noticed in the other judgments.”

38. The Division Bench of the Bombay High Court in its judgment in the case of **Jet Airways (India) Limited** (supra) has also held a Letter Patent Appeal as not being maintainable on a consideration of the scheme of the Act, 1996 and the precedents on the subject.

39. As regards the contention of the appellants' counsel that the execution proceedings out of which these appeals arise are not under the Act, 1996 but under the provisions of the Order 21 CPC, the same is absolutely misconceived. Section 36 is a provision for enforcement of an award. It provides for enforcement of an award

rendered under Part– I of the Act, 1996 “*in accordance with the provisions of the Code of Civil Procedure in the same manner as if it were a decree of the Court.*” What it means is that a legal fiction has been created by which the award is deemed to be a decree and is to be enforced under Section 36 of the Act, 1996 with the aid of the provisions of the Code of Civil Procedure but it does not mean that the award is in fact a decree and its execution is not under the Act, 1996 but under the Code of Civil Procedure, 1908. The said contention has been made only to be rejected.

40. So far as reliance placed by the appellants’ counsel upon a judgment of the Supreme Court in the case of ***Sundram Finance Limited (supra)***, first and foremost we must understand as to what was the issue before the Supreme Court in the said case. It is impermissible to take out one word or sentence from a judgment and attempt to rely upon it, as if, it was the law laid down. The issue before the Supreme Court in the said case has been noticed in Paragraph 1 which arose out of divergent legal opinion amongst different High Courts as to whether an award under the Act, 1996 is required to be first filed in the Court having jurisdiction over the arbitration proceedings for execution and then to obtain transfer of the decree or whether the award can be straightaway filed and executed in the Court where the assets are located. In fact, on a reading of the said decision we do not find anything therein which may help the cause of the appellants or support the contention of the appellants’ counsel that the

execution of an award is not under the Act, 1996 but under the provisions of the Code of Civil Procedure, 1908. We may in this regard refer to Paragraph 14 of the said report, wherein, the Supreme Court considered the provisions of Section 36 of the Act, 1996 and observed that *“an award is to be enforced in accordance with the provisions of the said Code in the same manner as if it were a decree. It is, thus, the enforcement mechanism, which is akin to the enforcement of a decree but the award itself is not a decree of the civil court as no decree whatsoever is passed by the civil court. It is the Arbitral Tribunal, which renders an award and the tribunal does not have the power of execution of a decree. For the purposes of execution of a decree the award is to be enforced in the same manner as if it was a decree under the said Code.”* It then referred to the definition clause of Section 2(e) and Section 42 and 32 of the Act, 1996. Ultimately, in Para 19 of the report it again observed that an award under Section 36 of the said Act is equated to a decree of the Court for the purposes of execution and only for that purpose. The aforesaid decision does not help the cause of the appellants.

41. The reliance placed by the learned counsel for the appellants upon the decision of the Supreme Court in the case case of ***P.S. Sathappan (supra)*** is also misplaced. In the said case the question was of maintainability of a Letter Patent Appeal against an order passed by a Single Judge of the High Court sitting in appellate jurisdiction under Code of Civil Procedure,

1908 which is not the case here. In that context the provision of Section 4, 104 and 100-A and its Legislative history was considered. We are not concerned with the provisions of CPC but of the Act, 1996. We have already considered Section 5 and 37 of the Act, 1996 which are relevant for our purpose and these provisions clearly evince a legislative intent, explicitly so, that except for the orders mentioned in Section 37 no other orders would be amenable to appeal, an aspect which has already been considered specifically by the Supreme Court of India in various decisions referred hereinabove, especially, the one in ***Furest Day Lawson Ltd.*** (supra) wherein the aforesaid decision in ***P.S. Sathappan (supra)*** has also been considered and it has been held that Arbitration Act, 1940 from its inception was a self-contained code, therefore, reliance upon this decision by the appellants' counsel is of no avail.

42. As regards the contention of the appellants' counsel that the arbitral proceedings stand terminated on rendering of the final award under Section 32 of the Act, 1996, therefore, the proceedings under Section 36 of the Act, 1996 are not part of the arbitral proceedings, with respect, the said contention is also misconceived. For execution/enforcement an award rendered under the Act, 1996 under Part – I thereof, the provision is contained in Section 36 and as already stated hereinabove the enforcement is under the provision of the Act, 1996 and for the said purpose such award is deemed to be a decree and has to be

enforced in accordance with the provisions of Code of Civil Procedure, 1908 which does not mean that the enforcement is not under the Act, 1996. This contention is rejected. The Supreme Court in the case of **Government of India Vs. Vedanta Limited and Ors.** reported in **(2020) 10 SCC 1** held in Para 69 of its decision as under:-

“69. Section 36 of the Arbitration Act, 1996 creates a statutory fiction for the limited purpose of enforcement of a “domestic award” as a decree of the court, even though it is otherwise an award in an arbitral proceeding. By this deeming fiction, a domestic award is deemed to be a decree of the court, even though it is as such not a decree passed by a civil court. The Arbitral Tribunal cannot be considered to be a “court”, and the arbitral proceedings are not civil proceedings. The deeming fiction is restricted to treat the award as a decree of the court for the purposes of execution, even though it is, as a matter of fact, only an award in an arbitral proceeding. In Paramjeet Singh Patheja v. ICDS Ltd., this Court in the context of a domestic award, held that the fiction is not intended to make an award a decree for all purposes, or under all statutes, whether State or Central. It is a legal fiction which must be limited to the purpose for which it was created. Paras 39 and 42 of the judgment in Paramjeet Singh Patheja read as : (SCC pp. 345-46)

“39. Section 15 of the Arbitration Act, 1899 provides for “enforcing” the award as if it were a decree. Thus a final award, without actually being followed by a decree (as was later provided by Section 17 of the Arbitration Act of 1940), could be enforced i.e. executed in the same manner as a decree. For this limited purpose of

enforcement, the provisions of CPC were made available for realising the money awarded. However, the award remained an award and did not become a decree either as defined in CPC and much less so far the purposes of an entirely different statute such as the Insolvency Act are concerned.

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42. The words “as if ” demonstrate that award and decree or order are two different things. The legal fiction created is for the limited purpose of enforcement as a decree. The fiction is not intended to make it a decree for all purposes under all statutes, whether State or Central.” (emphasis supplied)”

43. Thus, from the aforesaid the legal position is very clear that an award is deemed to be a decree but not actually a decree.

44. This decision was further considered by the Supreme Court in the case of **Amazon.com** (supra) and in Para 77 it was observed as under:-

“77. This judgment in Vedanta [Union of India v. Vedanta Ltd. is, therefore, authority for the proposition that the fiction created by Section 49 of the Arbitration Act is limited to enforcement of a foreign award, with the important corollary that an application to enforce an award is an application under the Arbitration Act and not an application under Order 21 of the Code of Civil Procedure (in which case, such application would have been governed by Article 136 of the Limitation Act as an execution application under Order 21, and not an application under the residuary Article 137 of the Limitation Act). Mr Salve's attempt to distinguish this judgment on the ground that Section 49 lays down an entirely different procedure from the procedure to be followed for a domestic award qua

enforceability does not, in any manner, distinguish the ratio of this judgment which is that an application to enforce a foreign award is not under Order 21 of the Code of Civil Procedure but under the Arbitration Act. Also, the deeming provision in Section 49, having reference to a decree of “that Court”, which refers to the court which is satisfied that the foreign award is enforceable, again, makes no difference to the aforesaid ratio of the judgment.”

45. The Supreme Court categorically repelled suggestion of Mr. Salve who attempted to draw a distinction as to the application of the decision in the case of **Vedanta Limited** (supra) in the case of a domestic award as the said case is related to Section 49 (Part II of the Act, 1996) pertaining to a foreign award. The Supreme Court categorically held that this did not in any manner distinguish the ratio of the said judgment in the case of **Vedanta Limited** (supra) which is that an application to enforce a foreign award is not under Order XXI of Code of Civil Procedure but under the Arbitration Act, meaning thereby, the enforcement / execution is under the Act, 1996.

46. For the reasons discussed hereinabove reliance placed by the appellants' counsel upon a Full Bench judgment of the Nagpur Bench of Bombay High Court in the case of **Gemini Bay Transcription Private Limited Vs. Integrated Sales Service Ltd.** reported in **2018 LawSuit (Bom) 255** is also of no avail. An award is deemed to be a decree and is to be enforced in accordance with the Code of Civil Procedure, 1908 which does not mean that it is actually a decree nor that its execution is under

the Code of Civil Procedure, 1908. The enforcement/ execution is under Section 36 of the 1996 with the aid of the provisions of the Code of Civil Procedure.

47. For the reasons given hereinabove, reliance placed by Shri Prithish Kumar, learned Senior Counsel appearing for the appellant upon the decision of the Supreme Court of India reported in **(2002) 5 SCC 510; ITI Limited Vs. Siemens Public Communications Network Ltd.** also does not help his cause. Not only this decision is referred to a Larger Bench in a case reported in **(2017) 2 SCC 37; Mahanagar Telephone Nagar Limited Vs. Applied Electronics Limited**, which of course by itself does not dilute its precedentiary value but when we peruse the said judgment we find that what it holds is that the provisions of the Act, 1996, especially, Section 37(2) thereof, does not bar a revisional remedy under the Code of Civil Procedure i.e. Section 115 CPC, whereas, we are not concerned with a revision under Section 115 CPC but a Special Appeal under the Allahabad High Court Rules, 1952, in fact, in Para 22 of the said report a clear distinction has been drawn between a revision and an appeal, therefore, the said decision also does not persuade us to take any different view as regards the maintainability of the appeal.

48. The contention of the appellants' counsel that an intra court appeal is also akin to a revision is absolutely misplaced and has been made only to be rejected.

49. In view of the above discussion, we hold that the Special Appeal under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952 arising out of an order passed by learned Single Judge of this Court in proceedings under Section 36 of the Act, 1996, is not maintainable and the fact that in the earlier appeal between the parties the appeal was held to be maintainable is of no consequence for the reason already given hereinabove and it does not attract the principle of res judicata/ constructive res judicata in view of the exception to application of such principle to points of jurisdiction and to pure points of law as already discussed. None of the decisions cited by the appellants' counsel help his cause in view of the discussions already made.

50. The remedy, if at all, is before Hon'ble the Supreme Court of India under Article 136 of the Constitution of India, as, observed in ***Simplex Infrastructures Limited*** (supra).

51. In view of the above, the Special Appeal No. 278 of 2026 is liable to be dismissed as not maintainable. Accordingly, the same is **dismissed**.

52. We may at this stage mention that Special Appeal Defective No. 430 of 2026 has also been filed with a delay of 291 days which has not been condoned. The special appeal itself not being maintainable the same is also **dismissed**.

(Manjive Shukla,J.) (Rajan Roy,J.)

September 16, 2026/R.K.P.