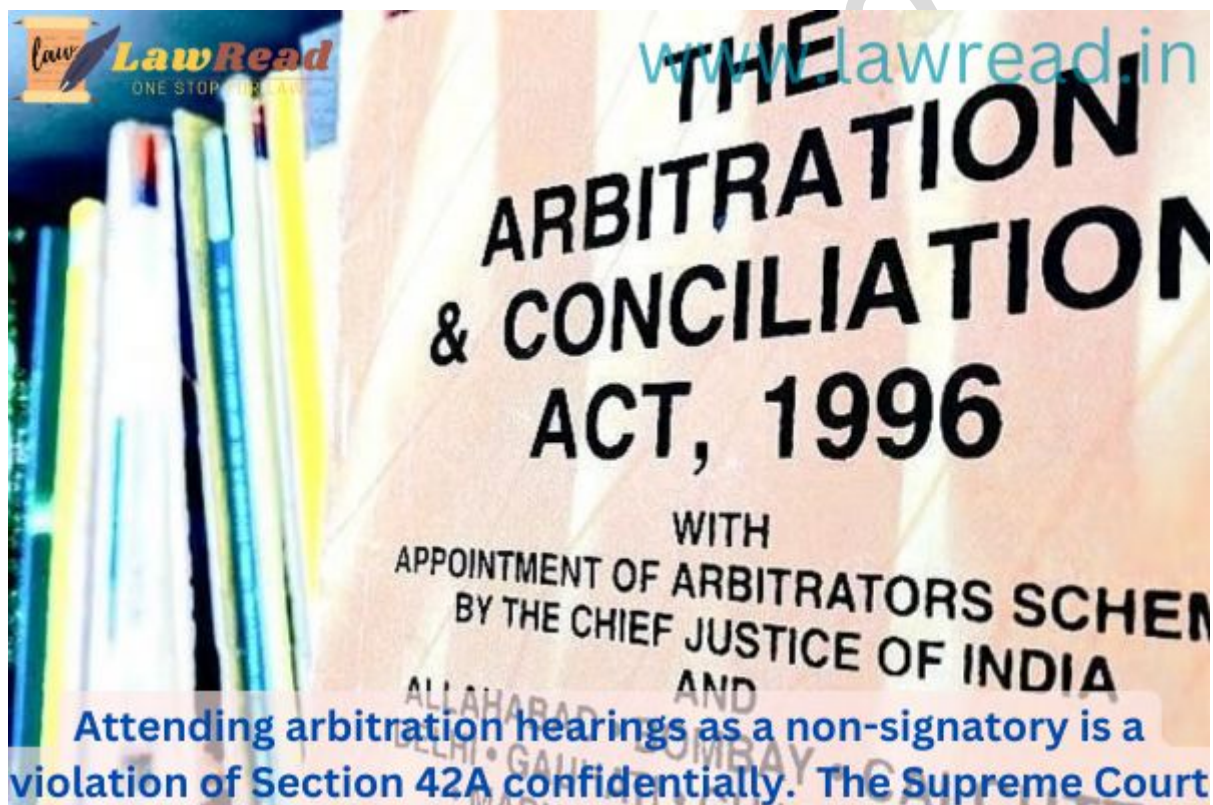


News

Attending arbitration hearings as a non-signatory is a violation of Section 42A confidentially. The Supreme Court



According to the Court, arbitral proceedings are confidential under Section 42A of the Arbitration and Conciliation Act, and allowing a third party to watch the proceedings would be against this statutory requirement.

A person who is not a signatory to an arbitration agreement cannot be allowed to stay present during arbitral proceedings, the Supreme Court noted on Wednesday.

Allowing someone who has not signed an arbitration agreement to attend the proceedings—when the award would not bind them—amounts to a path "unknown to law," according to a bench of **Justices PS Narasimha and AS Chandurkar**.

The Court further stated that arbitral hearings are confidential under Section 42A of the Arbitration and Conciliation Act, and allowing an outsider to watch the proceedings would be against this legislative requirement.

"A non-signatory to the agreement would be unfamiliar with such arbitration proceedings, as the parties to the agreement are bound by its terms and the sole arbitrator is required to settle disputes between parties to the agreement." Allowing a stranger to continue participating in the arbitration process, particularly when the award would not be legally binding on them, would be taking an uncharted legal path. The provisions of Section 42A of the Act must be consulted. All arbitral proceedings must be kept confidential by the arbitrator, the arbitral institution, and the parties to the arbitration agreement. The purpose of the law in preserving information secrecy is very evident. The Court noted that it would be against Section 42A of the Act to allow a third party who is not involved in the arbitration procedures to stay and watch the proceedings.

An appeal against a Delhi High Court ruling permitting non-signatories to an arbitration agreement to attend arbitral hearings with their legal representatives was being heard by the court.

An oral family settlement between Pawan and Kamal Gupta was made in June 2015, and it was formally formalized in July 2019 by a Memorandum of Understanding/Family Settlement Deed (MoU/FSD). The son of Kamal Gupta, Rahul Gupta, did not sign this contract.

Later, in order to select a single arbitrator, Pawan Gupta and another party petitioned the Delhi High Court under Section 11(6) of the Arbitration and Conciliation Act, 1996. In March 2024, the High Court denied Rahul Gupta's request to intervene in those proceedings and in a related Section 9 petition for temporary relief.

Rahul Gupta and a number of non-signatory businesses submitted new interim applications in August 2024 in the Section 11(6) procedures that had already been resolved. They asked for authorization to attend arbitration hearings, view case files, and resurrect previous intervention arguments.

In August 2024, the Delhi High Court granted them permission to attend the arbitration, and in November 2024, the court rendered the ruling final.

The Supreme Court was then petitioned by Pawan and Kamal Gupta, who questioned the authority of the High Court and the propriety of permitting non-signatories to participate in arbitral proceedings.

The highest court ruled that the court becomes functus officio and is unable to give further orders regarding the arbitration once an arbitrator has been appointed in accordance with Section 11(6) of the Act.

It additionally noted that there was "no legal basis whatsoever" to permit strangers to the agreement to witness the proceedings because the arbitral ruling would only bind the parties to the agreement and anyone claiming under them (Section 35).

Reiterating that the Arbitration Act is a self-contained code and that Section 5 of the Arbitration and Conciliation Act limits judicial interference, the Bench further determined that the High Court's reliance on Section 151 of the Code of Civil Procedure (CPC) to consider intervention pleas in proceedings that had already been concluded under Section 11(6) was misguided.

"RG and other intervenors' request to be allowed to stay present during the arbitration procedures before the sole arbitrator was not likely to be granted since it exceeded the parameters of Section 11(6) of the Act. In this case, the Code's Section 151 prohibitions could not have been applied. Furthermore, with the appointment of the sole arbitrator and the resolution of the procedures under Section 11(6) of the Act, the Court had ceased to exist. The Court was not permitted to consider such a request that did not belong in Part I of the Act, even according to the spirit of Section 5 of the Act," the statement stated.

As a result, the Court overturned the Delhi High Court's ruling and ordered the respondents to pay ₹3 lakh in costs to the Supreme Court Advocates-on-Record Association.

Advocates **Himanshu Satija**, **Karan Khanna**, **Harshit Khanduja**, **Sujal Gupta**, Harshed Sundar, Neha Mehta Satija, Simran **Mulchandani**, Vishal Sharma, Pulkit Khanduja, Shailendra Slaria, Rushabh Kapadia, and Dhiraj Abraham Philip spoke on behalf of the petitioners, along with senior advocates V Giri and Malvika Trivedi.

In addition to lawyers Ankit Roy, Rishi Raj Sharma, Jyoti Taneja, Kanika Singhal, Shekhar Gupta, **Shivek Trehan**, Abhishek Mishra, Moksh Tyagi, **Muskan Puri**, Kartik Kumar, Ishika, Ishan Kumar, and Ayushi Sinha, the respondents were represented by senior counsel Amit Sibal, Akhil Sibal, Bansuri Swaraj, and J Sai Deepak.