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Judicial Intervention in Granting Interim Relief: Evolving Trends in Indian Arbitration Law

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ABSTRACT

The law relating to interim relief in arbitration in India has undergone a significant transformation after the enactment of the Arbitration and Conciliation (Amendment) Act, 2015. The amendment marked a decisive shift from excessive judicial supervision toward a pro-arbitration framework that prioritises arbitral autonomy, efficiency, and minimal court interference. Among the most important areas affected by this legislative reform is the law governing interim measures under Sections 9 and 17 of the Arbitration and Conciliation Act, 1996. Judicial intervention in granting interim relief has evolved from a court-centric model to a tribunal-centric approach, thereby redefining the relationship between courts and arbitral tribunals in India. This article critically analyses the evolving judicial trends concerning interim measures in arbitration and examines how Indian courts have shaped the scope and operation of interim relief after the 2015 amendments.

Prior to the amendment, parties frequently approached courts under Section 9 even after the constitution of arbitral tribunals because orders passed under Section 17 lacked enforceability. Courts exercised broad powers in granting injunctions, preservation orders, appointment of receivers, and security for claims. The absence of effective enforcement mechanisms for tribunal-ordered interim measures led to heavy judicial intervention and diluted the autonomy of arbitration proceedings. The 2015 amendment attempted to rectify this imbalance by strengthening Section 17 and introducing Section 9(3), which restricts judicial intervention once the arbitral tribunal is constituted unless the remedy under Section 17 is inefficacious. The amendment thereby elevated the status of arbitral tribunals and sought to minimise parallel court proceedings.

This article evaluates how Indian courts have interpreted these amendments and contributed to the development of a more arbitration-friendly regime. Judicial decisions delivered after 2015 reveal a gradual but noticeable movement toward respecting arbitral autonomy while simultaneously preserving judicial safeguards in exceptional situations. Courts have increasingly recognised that the purpose of Section 9 is not to substitute arbitral proceedings but to protect the efficacy of arbitration itself. The judiciary has

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therefore attempted to harmonise the principles of party autonomy, procedural efficiency, and access to effective remedies.

I. INTRODUCTION

Court proceedings are usually lengthy and complex, often involving several twists and turns before the matter is completely disposed of. During this process, the court may need to conduct multiple interlocutory hearings and issue orders to maintain the *status quo* for the parties involved until the issues are resolved. One of the main advantages of civil litigation is that, at any stage of the proceedings, parties can approach the court to seek interim relief while awaiting the final resolution of the issues in the suit. An interlocutory application is nothing but a request made by the applicant to the court before which the proceedings are initiated, to pass an order restraining the other side from continuing the alleged act which infringes the right of the applicant, or seeking urgent assistance from the court by appropriate orders which may protect and preserve his right. Interlocutory relief means an order passed during the pendency of litigation.

II. INTERIM MEASURES AS EQUITABLE REMEDY

The common law did not provide for measures to prevent harm before it was done. In early common law, the remedies available to an aggrieved party were predominantly compensatory, focused on awarding damages after a legal wrong had occurred. This system functioned on the premise that monetary compensation could adequately rectify an injury, and thus the law generally did not intervene to prevent harm before it materialised. However, this approach often proved insufficient in circumstances where the damage, once done, could not be meaningfully undone through financial redress, particularly in cases involving property rights, fiduciary obligations, or situations where the injury was irreparable or on-going. Against this backdrop, the principles of equity emerged as a corrective force within the legal system. They were developed to provide preventive relief. The Courts of Chancery, guided by notions of fairness and conscience, developed preventive remedies such as injunctions and specific performance, aimed at restraining wrongful conduct before it occurred or compelling the fulfilment of obligations in kind. Equity thus supplemented the rigidity of common law by prioritising prevention over cure, enabling the legal system to protect rights more effectively, and avoid the inadequacy of purely compensatory relief.

The main distinction between the remedy in law and an equitable remedy is that the latter cannot be claimed as of right, but it is purely the discretion of the court considering it. The remedy or

interim relief, when granted, is operative only during the interval between the inception of the suit and its final disposal. This remedy, once invoked, empowers the court to grant relief which is just and equitable and also aimed at preserving the rights of the parties, thereby maintaining the *status quo* during the entire period of pendency of the litigation, to meet the ends of justice.

The discretion to grant equitable remedy is founded on certain principles which can be summarized as; (i) equity regards that done as ought to be done, (ii) equity looks in to the intent rather than to the form; (iii) He who seeks equity must do equity, (iv) he who comes into equity must come with clean hands, (v) equality is equity, (vi) where there are equal equities, first in time will prevail, (vii) where there are equal claims in equity, the law will prevail, (viii) equity aids the vigilant and not those slumber on their rights, (ix) equity imputes an intention to fulfil an obligation, (x) equity will not suffer a wrong with a remedy, (xi) equity follows the law, (xii) equity acts *in personam*, etc.

III. INTERIM RELIEF UNDER THE CODE OF CIVIL PROCEDURE, 1908

The equitable principles of preventive relief are outlined in the Code of Civil Procedure, 1908, and include remedies such as temporary injunctions, attachment and arrest before judgment, and appointing a receiver for property to maintain the *status quo* while a case is pending before a court of law. The court's duty to do justice in all cases, whether provided for or not, carries with it the necessary power to do justice in the absence of express provision.¹ Section 151² of Code of Civil Procedure recognises the inherent powers of the court to grant appropriate orders to achieve justice, when there is an abuse of the process of law by one party. The inherent powers are considered necessary to do the right and undo the wrong in the course of administration of justice³ and to be regarded as 'supplementary to specially conferred powers.'⁴ It is noteworthy that inherent powers are not exercisable in cases when the code has a special provision addressing the matter. The code takes precedence in these situations. The remedy of interim relief refers to temporary measures granted by a court during the pendency of a civil suit to maintain the *status quo*, protect the rights of the parties, or prevent the irreparable harm that can be caused to the parties, before the disposal of the suit. The prerogative of the court which considers the original suit while entertaining an interlocutory application is not to consider in detail serious questions of law and fact which demand evidence, complex

¹ *Manohar Chopra v. Seth Hiralal*, AIR 1962 SCP.527.

² The Code of Civil Procedure, 1908 (Act 9 of 1908), s.151. Nothing in this code, shall be deemed to limit or otherwise affect the inherent powers of the court to make such orders as may be necessary for the ends of justice or to prevent the abuse of the process of the court.

³ *State of UP v. Roshan Singh* AIR 2008 SC P.1190.

⁴ *Mulraj v. Murti Raghunath Ji Maharaj* AIR 1967 SC P.1386.

arguments, and considerations. Therefore, while considering such applications, courts do not go into such details, which ultimately dispose of the matter. In a petition for interlocutory application, the applicant doesn't need to be the plaintiff in the suit. Even the defendant may seek interim relief at any stage of the proceeding.

One of the initial steps involved in getting an interim relief is that the applicant should establish that there is a *prima facie* case in his favour. Here, the burden on the applicant is only to establish a case '*prima facie*.' A *prima facie* case refers to the initial showing of evidence that, when viewed in a light most favourable to the presenting party, is sufficient to establish the basic elements of a claim or case. What is required is that the applicant should bring before the court the materials which are sufficient to substantiate his claim in the original suit.

The second aspect that the applicant needs to convince the court is the irreparable injury that he will have to suffer if the relief prayed for is not granted. By the term irreparable injury what is meant is that if the remedy sought for is not granted, it may result in an injury to the applicant that cannot be compensated at all. It often means damage that is so severe that it cannot be reversed or repaired to its original state.

Once the applicant successfully establishes a *prima facie* case in his favour and convinces the court as to the irreparable injury which he will have to suffer if the relief prayed for is not granted, the court is required to weigh the balance of convenience. The decision as to grant or not to grant the relief sought has a direct impact on the interests of the parties. So, the inconvenience caused to the parties in either way is to be assessed, i.e., is it in the best interest of the parties whether to grant or refrain from granting the remedy prayed for? Hence, while considering the application for the interim measure, it is the duty of the court to weigh the inconveniences caused to both parties, and it should reach a conclusion which will have the effect of minimising the inconveniences, thereby protecting the interests of the parties and maintaining the *status quo* as far as possible till the disposal of the suit. If all these aspects are produced and proved to the subjective satisfaction of the court, the court may exercise this discretionary jurisdiction.

IV. INTERIM MEASURES IN ARBITRATION PROCEEDINGS

As in the case of suits filed before the Civil Courts, the parties to the arbitration agreement may also need some interim measures for the protection and preservation of the subject matter of dispute, pending the arbitration proceeding. It is not incompatible with the arbitration agreement for a party to request, from a court, an interim measure of protection and for a court to grant such a measure either before or during arbitral proceedings. Under the Act, two provisions are

incorporated under Section 9⁵ and Section 17,⁶ empowering the court as well as the arbitral tribunal to grant interim measures in arbitration. These provisions are incorporated in line with the corresponding provisions under the UNCITRAL Model Law.

V. NATURE OF INTERIM RELIEF ENVISAGED UNDER THE UNCITRAL MODEL LAW

UNCITRAL Model Law provides for the remedy of an interim measure in an arbitral proceeding. Article 9⁷ and Article 17⁸ of the Model Law make provision for interim relief that can be granted by the court and the arbitral tribunal, respectively. However, the range of interim measures of protection covered under Article 9 is considerably wider than that under Article 17, as the power of the court is an inherent one, whereas the power conferred on the tribunal is subject to the agreement between the parties.

Article 9⁹ of the UNCITRAL Model Law, by providing for relief of an interim nature in an arbitration proceeding, recognizes and gives effect to the arbitration agreement formed between the parties. At the same time, it makes it clear that the ‘presumed negative impact’ of the arbitration agreement that the jurisdiction of the court is totally excluded in arbitration, does not apply to interim measures. Further, the incorporation of this provision is intended to make the entire arbitration procedure effective, efficient and to secure the expected results. The remedy under Article 9¹⁰ can be invoked only for seeking an interim measure pending commencement of arbitration proceedings or in the course of proceedings. It is not a substantive relief as such relief is possible only as a decree at the final disposal of the dispute instead, such an interim measure is intended to protect the subject matter of the dispute, and secure the interest of the party claiming such relief. The purpose behind providing the court with the power to grant interim measures is explained in the following words:

“...The whole purpose of giving the court the power to make such orders is to assist the arbitral tribunal in cases of urgency or before there is arbitration on foot. Otherwise, it is all too easy for a party who is bent on a policy of non-cooperation to frustrate the arbitral process. Of course, in any case where the court is called upon to exercise the power, it must take great care not to usurp the arbitral process and to ensure, by exacting appropriate undertakings from the claimant, that the substantive questions are reserved for the arbitrator or arbitration.”¹¹

⁵ The Arbitration and Conciliation Act, 1996. (Act 26 of 1996), s.9.

⁶ The Arbitration and Conciliation Act, 1996. (Act 26 of 1996), s.17.

⁷ UNCITRAL Model Law on International Commercial Arbitration 1985, art.9.

⁸ UNCITRAL Model Law on International Commercial Arbitration 1985, art 17.

⁹ Ibid 19

¹⁰ Ibid 20

¹¹ Russell on Arbitration, (Sweet & Maxwell Limited of 100 Avenue Road, Swiss Cottage, London, NW3 3PF, Twenty Third edn.2007)

VI. INTERIM MEASURES UNDER THE ARBITRATION AND CONCILIATION ACT, 1996

Section 5¹² of the 1996 Act, provides for the extent of judicial intervention in arbitral proceeding. It begins with a non-obstante clause, '*except where so provided in this Part,*' so that the intervention of the court is very less and limited to the specified occasions, and thereby the proceedings are not delayed. This section is in accordance with Article 5¹³ of the UNCITRAL Model Law. By going through the various provisions under the Act, one can easily understand the nature of intervention envisaged, and it extends from deciding the arbitrability of the dispute, reference to arbitration when there is an arbitration agreement, appointment of arbitrators, providing interim measures, to setting aside of arbitral awards.

Section 9¹⁴ provides for the power of the 'court' to grant interim measures in arbitral proceeding. Section 9 confer wide powers on the court to order interim measures of protection in respect of (i) preservation, custody or sale of goods which are the subject matter of the arbitration agreement; (ii) securing the amount in dispute in the arbitration; (iii) detention, preservation or inspection of any moveable or immovable property which is the subject matter of the dispute in arbitration and (iv) obtaining full information or evidence as to which any question may arise in the arbitration proceeding. The power conferred on courts under this section is aimed at strengthening the effectiveness of arbitration by providing some relief which will maintain the status quo of the parties. The interim relief can be granted in aid of the arbitration proceeding and not to frustrate it.¹⁵

When can a Party seek the remedy of Interim Relief under Section 9?

The principle underlying Section 9 allows a party to the arbitration agreement to seek relief even before the commencement of the arbitration proceeding. A party may, before or during arbitral proceedings or at any time after the making of the award but before it becomes a decree of a court, apply to a court.¹⁶ The setting of the word "before" preceding the expression "or during arbitral proceedings" suggests that this section can be invoked during the arbitral proceedings or during the interregnum when a request for reference for arbitration is conveyed by a party under Section 21, and the time taken when reference is in fact made to an arbitrator.

The scope of the phrase 'either before or during the arbitral proceeding' used in Section 9 was

¹² Supra Section 5

¹³ UNCITRAL Model Law on International Commercial Arbitration, 1985, art.5.

¹⁴ The Arbitration and Conciliation Act, 1996 (Act 26 of 1996), S.9.

¹⁵ *J&K State Forest Dept. v. Abdul Karim Vani*, AIR 1989 SC 1498

¹⁶ Johari, *Commentary on Arbitration and Conciliation Act 1997*, 2nd edn. P.278

examined by the Apex Court in *Sundaram Finance Ltd v. NEPC India Ltd.*¹⁷ Where an interim protection is sought before arbitral proceedings, there must be adequate proof of steps taken, or being taken, for initiating arbitration proceedings. Without a substantive move for reference to arbitration by an appropriate forum or a declaration of the party's stand on it, this section cannot be invoked. The Supreme Court opined that this view correctly represents the position in law, namely, that even before the commencement of arbitral proceedings, the Court can grant interim relief provided that there is a manifest intention for the parties to arbitrate. This is clear from the following passage of the judgment;

"...When an application under Section 9 is filed before the commencement of the arbitral proceedings, there has to be manifest intention on the part of the applicant to take recourse to the arbitral proceedings if, at the time when the application under Section 9 is filed, the proceedings have not commenced under Section 21 of the 1996 Act."

Later, the Supreme Court clarified the nature of power conferred under Section 9 in *Ashok Traders*¹⁸—

"The word 'before' means, inter alia, 'ahead of; in presence or sight of; under the consideration or cognizance of.' The two events sought to be interconnected by use of the term 'before' must have a proximity of relationship by reference to occurrence; the later event proximately following the preceding event as a foreseeable or 'within sight' certainty. The party invoking Section 9 may not have actually commenced the arbitration proceedings but must be able to satisfy the Court that the arbitral proceedings are actually contemplated or manifestly intended... and are positively going to commence within a reasonable time. What is reasonable time will depend on the facts and circumstances of each case, and the nature of interim relief sought would itself give an indication thereof. The distance of time must not be such as would destroy the proximity of relationship of the two events between which it exists and elapses. The purpose of enacting Section 9, read in the light of the Model Law and UNCITRAL Rules, is to provide 'interim measures of protection'. The order passed by the Court should fall within the meaning of the expression 'an interim measure of protection' as distinguished from an all-time or permanent protection." Thus, if there is nothing on record to show that steps have been taken by the party to commence an arbitration proceeding, then no interim

¹⁷ AIR1999 SC 565

¹⁸ *Ashok Traders v. Gurumukh Das Saluja*, AIR 2004 SC 1433.

*order may be passed since Section 9 allows relief only in relation to arbitration proceeding.*¹⁹

By holding so, the Supreme Court clarified that the jurisdiction exercised under Section 9 is intrinsically linked to the existence of a valid arbitration agreement and the contemplation or pendency of arbitral proceedings. The provision is therefore intended to aid and facilitate the arbitral process rather than to replace it through parallel judicial adjudication. By treating Section 9 as ancillary to arbitration, the Court ensured that parties cannot invoke the provision as an independent or standalone remedy unconnected with genuine arbitral proceedings.

Principles Underlying the Discretion

The principles governing the grant of interim measures in an arbitration are the same as in any other civil case. The court, before the grant of interim measures of protection, must broadly satisfy itself that;

- (a) The person seeking interim measures has made out a prima facie case; this is a *sine qua non*.
- (b) The balance of convenience is in favour of the applicant; that is, whether it could cause greater inconvenience to him if the injunction is not granted than the inconvenience to which the other side would be put if the injunction is granted. As to that, the governing principle is whether the party seeking an injunction would be adequately compensated by an award of damages, and whether the defendant would be in a position to pay them.
- (c) The person, in the absence of interim measures, would suffer irreparable loss or injury, which is incapable of being compensated in terms of money.²⁰

While exercising jurisdiction under Section 9 of the Arbitration and Conciliation Act, courts are guided by the equitable principles traditionally governing the grant of interim injunctions, even though proceedings under the provision are not strictly controlled by the Code of Civil Procedure. In *Adhunik Steels Ltd. v. Orissa Manganese & Minerals Pvt. Ltd.*,²¹ the Supreme Court clarified that “*the general rules governing the grant of interim injunction continue to apply.*” Consequently, courts ordinarily assess the existence of a prima facie case, the balance of convenience, and the likelihood of irreparable injury before granting interim protection. The decision underscores that interim relief under Section 9 is discretionary and equitable in nature and cannot be granted mechanically merely because an arbitration agreement exists between

¹⁹ *Archcon v. Sewda Construction Co*, (2005) 2 Arb L R 156.

²⁰ *N. V Choudhary v.. Hindustan Steel works Construction Ltd* , AIR 1984 AP 110.

²¹ (2007) 7 SCC 125.

the parties. By insisting upon established equitable standards, the Court curtailed indiscriminate grant of interim measures and ensured that judicial discretion under Section 9 remains structured and principled.

VII. IMPACT OF SECTION 9 (3) IN BALANCING THE JURISDICTION OF THE COURT AND THE TRIBUNAL

The Arbitration and Conciliation (Amendment) Act, 2015, made significant changes to the interim relief provisions of the Arbitration and Conciliation Act, 1996. Parties may request interim relief from the Court under Section 9 of the Act at any point after the award is passed but before it is enforced, as well as before and during the arbitral procedures. A series of changes were implemented in the 2015 Amendment to reduce the courts' influence in the arbitration process and to strengthen the power of the arbitral tribunal under Section 17.²² The court's ability to provide temporary relief was limited once the arbitral tribunal was established by the inclusion of subsection (3) to Section 9. Following the arbitral tribunal's establishment, the tribunal itself has the authority to award temporary relief. To guarantee that rulings of the arbitral tribunal for temporary reliefs would have the same effect as and be enforceable with the same strength as orders of the competent Court under section 9, the 2015 Amendment also incorporated a deeming fiction in section 17.²³ The provision stipulates that once the arbitral tribunal has been constituted, courts should ordinarily refrain from entertaining applications for interim relief under Section 9 unless the remedy available under Section 17 is shown to be inefficacious.

After the incorporation of Section 9(3) to the Act, it is debatable whether Section 9(3) of the Arbitration Act, as amended, restricts the power of the court to entertain an application under Section 9(1) of the Arbitration Act, once an arbitral tribunal has been constituted? Whether Section 9(3) ousts the jurisdiction conferred on the civil court under Section 9(1)? The Law Commission in its 246th Report clearly specifies the objective behind the insertion of Section 9(3), which “seeks to reduce the role of the court in relation to the grant of interim measures once the arbitral tribunal is constituted.”

The object of Section 9(3) is “*to avoid courts being flooded with Section 9 petitions when an Arbitral Tribunal is constituted for two good reasons — (i) that the clogged court system ought to be decongested; and (ii) that an Arbitral Tribunal, once constituted, would be able to grant*

²² The Arbitration and Conciliation Act 1996 (Act 26 of 1996), s.17.

²³ S.17 (2). Subject to any orders passed in an appeal under Section 37, any order issued by the arbitral tribunal under this section shall be deemed to be an order of the Court for all purposes and shall be enforceable under the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were an order of the Court.

*interim relief in a timely and efficacious manner... as laid down by the Supreme Court in Amazon NV Investment Holdings v. Future Retail Ltd.*²⁴

In *Arcelor Mittal Nippon Steel India Ltd. v. Essar Bulk Terminal Ltd.*,²⁵ the Supreme Court gave a strict interpretation to Section 9(3) and held that the restriction contained therein is mandatory in nature. The Court recognized that post-amendment, arbitral tribunals possess substantial authority to grant interim measures and that Section 17 has been strengthened to place tribunal-ordered relief on a footing comparable to court-ordered protection. Emphasizing the principle of minimal judicial interference, the Court observed that courts should not operate as parallel forums once the tribunal is in place. The decision therefore reinforces tribunal autonomy and reflects the legislative intent of reducing unnecessary court intervention in arbitration. However, the Supreme Court clarified that situations may occur when the arbitral tribunal is unable to meet because of illness or other reasons, when members of the tribunal are unable to come together quickly to determine the urgency of the interim application, or when the tribunal's very constitution is being contested on the grounds of bias, among other things. In such cases, the legislature's intention under Section 9 would not be to deny the court's powers because interim reliefs are by their very nature urgent and require immediate intervention. This is especially true in cases where the tribunal's inaction would make it impossible to obtain such a remedy. In this case the Court's interpretation of the word 'entertain' found in sub-section (3) to Section 9 established the rules to follow. The Supreme Court ruled that the word entertain means to "*to consider, by application of mind to the issues raised. The Court entertains a case when it takes a matter up for consideration. The bar of Section 9(3) of the Act would not operate once an interim relief application had already been entertained and taken up for consideration, as in the instant case, where the hearing has been concluded and judgment had been reserved.*"

A court must "entertain" a party when it has given careful thought to the issues presented in the application and evaluated it on the merits. The conclusion reached was that even if the procedure extends until the order on the application is made, this does not prevent the court from exercising its authority under Section 9, even if the tribunal has already been constituted by that time. The court also clarified that there was never any intention to "turn back the clock" and require the arbitral tribunal to reevaluate a motion for temporary relief that was already seized by the court under Section 9. The Court acknowledged that judicial intervention may still be warranted in exceptional circumstances where the remedy under Section 17 is ineffective, particularly in situations involving urgency, enforceability concerns, or practical inability of the tribunal to

²⁴ (2022) 1 SCC 209.

²⁵ (2022) 1 SCC 712,

provide immediate protection.

It is readily apparent from a harmonious reading of Sections 9(1) and 9(3), as amended by the 2015 Amendment Act, that the Court retains the authority to grant interim relief even after the arbitral tribunal is established.²⁶In *Benara Bearings & Pistons Ltd. v. Mahle Engine Components India (P) Ltd.*,²⁷ a Division Bench of the Delhi High Court was of the view that “Section 9(3) does not operate as an ouster clause insofar as the courts’ powers are concerned. It is a well-known principle that whenever the legislature intends an ouster, it makes it clear. We may also note that there is no provision under the said Act which, even as a transitory measure requires the court to relegate or transfer a pending Section 9(1) application to the arbitral tribunal, the moment an arbitral tribunal has been constituted...”

The evolving jurisprudence under Section 9 as amended, reflects a clear judicial commitment toward promoting arbitral autonomy while preserving the court’s supportive role in ensuring the effectiveness of arbitral proceedings. Through a series of significant decisions, the Supreme Court has progressively strengthened the authority of arbitral tribunals, particularly after the 2015 amendments, and has emphasized minimal judicial interference consistent with international arbitration practices. At the same time, courts have continued to exercise limited supervisory jurisdiction in exceptional circumstances to prevent injustice, protect the subject matter of disputes, and safeguard the efficacy of arbitration. The contemporary judicial approach therefore represents a careful balance between court-assisted protection and tribunal independence, contributing substantially to India’s development as a pro-arbitration and arbitration-friendly jurisdiction.

²⁶ *Energco Engg. Projects Ltd. v. TRF Ltd.*, 2016 SCC OnLine Del 6560.

²⁷ 2017 SCC Online 7226