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## **Delhi High Court clarifies limits of interim relief under Section 17 of the Arbitration and Conciliation Act, 1996**

The Delhi High Court (“**Delhi HC**”) in *Khurana Educational Society (Regd.) vs. Smt. Shashi Bala*<sup>1</sup> examined the scope of appellate interference under Section 37(2)(b)<sup>2</sup> of the Arbitration and Conciliation Act, 1996 (“**Arbitration Act**”) in relation to an interim order passed by an arbitral tribunal under Section 17 of the Arbitration Act.

The Delhi HC held that although appellate interference under Section 37 of the Arbitration Act is limited, courts may intervene where an arbitral tribunal grants interim relief that effectively amounts to final adjudication of disputed claims. The Delhi HC emphasised that the interim measures under Section 17<sup>3</sup> of the Arbitration Act are protective and preservative in nature and cannot be used to impose substantive monetary liabilities where the foundational entitlement itself remains seriously disputed.

### **Brief facts**

The dispute concerned land measuring approximately 4840 (four thousand eight hundred and forty) sq. yards situated in Village Goyla Khurd, New Delhi, which the respondent claimed to own by virtue of a registered sale deed. The property had been leased to the appellant educational society under a registered lease deed dated May 2, 2000, at a monthly rent of INR 1,000 (Indian Rupees one thousand), and was being used for purposes connected with the operation of a school run by the society.

Disputes subsequently arose between the parties concerning: (a) the termination of the lease through a notice dated April 9, 2018; (b) the appellant’s continued possession thereafter; and (c) the respondent’s claim for damages and mesne profits for continued occupation of the property.

The respondent initially instituted a commercial suit before the Delhi HC seeking possession and other reliefs, which was subsequently referred to arbitration pursuant to an application under Section 8 of the Arbitration Act.

<sup>1</sup> Arb A (Comm) 71 of 2025 (decided on February 26, 2026)

<sup>2</sup> Section 37(2)(b) of the Arbitration Act provides a statutory right of appeal against an order of an arbitral tribunal granting or refusing to grant an interim measure under Section 17 of the Arbitration Act. The scope of such appellate jurisdiction is limited and supervisory in nature, and courts ordinarily interfere only where the tribunal’s exercise of discretion is manifestly arbitrary, perverse, or contrary to settled legal principles.

<sup>3</sup> Section 17 of the Arbitration Act empowers an arbitral tribunal to grant interim measures of protection during the pendency of arbitral proceedings. Following the 2015 amendments, the tribunal’s powers under Section 17 of the Arbitration Act are aligned with those of courts under Section 9 of the Arbitration Act, and orders passed under Section 17 of the Arbitration Act are enforceable as orders of a court under Section 17(2) of the Arbitration Act.

During the arbitral proceedings, the respondent filed an application under Section 17 of the Arbitration Act seeking interim measures, including:

1. payment of usage charges/mesne profits;
2. inspection of the property; and
3. restraint against creation of third-party interests.

By an order dated September 16, 2025, the arbitral tribunal directed the appellant to deposit usage charges at the rate of INR 3,00,000 (Indian Rupees three lakhs only) per month with effect from October 15, 2018, with the amounts to be secured in a joint interest-bearing arrangement during the pendency of arbitration. The tribunal also permitted inspection of the property and restrained the creation of third-party rights.

Aggrieved by these directions, the appellant filed an appeal before the Delhi HC under Section 37(2)(b) of the Arbitration Act.

## Issue

The principal question before the Delhi HC was whether the arbitral tribunal had exceeded the scope of its interim jurisdiction under Section 17 of the Arbitration Act by directing the deposit of substantial usage charges when the underlying disputes relating to termination of the lease, title to the property, and liability to pay mesne profits remained unresolved.

## Analysis and findings

### Scope of appellate jurisdiction under Section 37 of the Arbitration Act

The Delhi HC reiterated that appellate jurisdiction under Section 37 of the Arbitration Act is limited and supervisory in nature. The legislative framework of the Arbitration Act, particularly Section 5 of the Arbitration Act, reflects a clear intent to minimise judicial interference in arbitral proceedings.

Accordingly, appellate courts are not expected to re-evaluate the merits of the dispute or substitute their own views for those of the arbitral tribunal. Interference is warranted only where the tribunal's discretion has been exercised arbitrarily, perversely, or in disregard of settled legal principles.

However, where an interim order effectively transgresses the permissible scope of interim jurisdiction and assumes the character of final adjudication, appellate intervention may be justified.

### Nature and scope of interim measures under Section 17 of the Arbitration Act

The Delhi HC observed that the power of an arbitral tribunal under Section 17 of the Arbitration Act is analogous to the power of courts to grant interim protection under Section 9 of the Arbitration Act.

Consequently, the exercise of such jurisdiction must be guided by the well-established principles governing interim injunctions, namely:

1. existence of a prima facie case;
2. balance of convenience; and
3. likelihood of irreparable injury.

Interim measures are intended to preserve the subject matter of arbitration and ensure the efficacy of the arbitral process, rather than to determine substantive rights of the parties.

## Impermissibility of granting substantive relief at the interim stage

Upon examining the impugned order, the Delhi HC found that the arbitral tribunal had effectively proceeded on the assumption that the lease had been validly terminated and that the appellant's continued possession was unauthorised, even though these issues formed the core of the arbitral dispute and required adjudication upon evidence.

By directing the appellant to deposit INR 3,00,000 (Indian Rupees three lakh) per month retrospectively from October 2018, the tribunal had in effect granted a portion of the final relief sought in arbitration, thereby imposing a significant monetary liability at the interlocutory stage.

The Delhi HC held that such directions fall outside the preservative character of interim jurisdiction under Section 17 of the Arbitration Act.

## Improper determination of mesne profits

The Delhi HC also found fault with the arbitral tribunal's approach to determining usage charges.

The arbitral tribunal had relied on lease deeds of nearby properties executed in 2021 and 2025 to determine the market rental value and fix usage charges retrospectively from 2018. The Delhi HC held that such an approach was flawed, as determination of mesne profits is a fact-intensive exercise requiring evidentiary scrutiny, including assessment of comparability of properties, location, amenities, and relevant market conditions.

The Delhi HC observed that such issues cannot ordinarily be adjudicated at the interim stage without trial or expert evaluation.

## Interim monetary directions where liability is disputed

The Delhi HC further relied on the decision of the Supreme Court of India in *Evergreen Land Mark Private Limited vs. John Tinson and Company Private Limited*. The Supreme Court in that case, held that arbitral tribunals cannot direct deposit of disputed monetary amounts under Section 17 of the Arbitration Act where the liability itself remains contested and awaits adjudication on merits. Applying this principle, the Delhi HC held that the arbitral tribunal could not impose interim financial liability when the disputes concerning title, termination of the lease, and liability to pay mesne profits were yet to be adjudicated.

## Decision

The Delhi HC held that the impugned order exceeded the permissible scope of interim jurisdiction under Section 17 of the Arbitration Act. By directing the deposit of substantial usage charges at the interlocutory stage, the arbitral tribunal had effectively granted substantive monetary relief without adjudication of the underlying dispute. Accordingly, the Delhi HC interfered with the impugned order under Section 37 of the Arbitration Act.

## Conclusion

The decision reinforces the limited and supervisory nature of appellate jurisdiction under Section 37 of the Arbitration Act. It clarifies the boundaries of an arbitral tribunal's power to grant interim relief under Section 17 of the Arbitration Act. The Delhi HC emphasised that interim measures are intended to preserve the subject matter of arbitration. It also protects the arbitral process and cannot be used to impose substantive financial obligations that effectively pre-judge disputed claims.

Importantly, the ruling underscores that where the underlying entitlement to rent, damages, or mesne profits remains contested, tribunals must exercise caution in issuing monetary directions at the interim stage. Such determinations

ordinarily require evidentiary assessment and final adjudication. The judgment therefore serves as an important reminder that interim jurisdiction under Section 17 of the Arbitration Act must remain protective rather than adjudicatory and should not be employed in a manner that effectively grants final relief before the dispute is decided.

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