

COURT-UNQUOTE

Case Title: Ashok & Ors. v. Padam
Chand & Ors



VA VAISH
ASSOCIATES
ADVOCATES
ESTD. 1971

CORPORATE, TAX AND BUSINESS ADVISORY LAW FIRM

**Arbitral Award Invoked Without Court's
Leave Cannot Bar a Pending Civil Suit
under the Arbitration Act, 1940 – Ashok &
Ors. v. Padam Chand & Ors.**

The Supreme Court in *Ashok & Ors. v. Padam Chand & Ors., SLP (C) No. 18146 of 2025* examined whether a Suit can be dismissed based on an arbitral award rendered under Arbitration & Conciliation Act, 1940 (**the Act**) with respect to the same subject matter and held that the arbitral proceedings conducted without the leave of the Court is unenforceable against the parties to the suit.

Brief Facts:

The Plaintiffs filed a suit before the Trial Court seeking possession and mesne profits against the Defendants. During the suit's pendency, the parties referred their disputes to arbitration without obtaining the Trial Court's permission under Section 21 of the Act, resulting in an award dated 15.09.1983.

On 23.12.1983, the Defendants filed an application before the Trial Court to make the award a rule of the court, which was allowed on 02.08.2000. The Plaintiffs challenged the Trial Court's order making the arbitral award a rule of the court before the High Court and subsequently before the Supreme Court. Although the challenge was unsuccessful, the Supreme Court granted them liberty to raise objections under the proviso to Section 47 of the Act in the pending suit.

Meanwhile, execution proceeding was initiated by the Defendants.

The Trial Court dismissed the suit on 22.07.2010 on the basis of the award, holding the arbitration valid and the subject matters distinct; the Plaintiffs' First Appeal against the order dated 22.07.2010 of dismissal of suit was also dismissed by the High Court.

The Supreme Court, while examining the SLP against the dismissal order of the High Court considered the propositions that:

- Whether a Suit can be dismissed on the basis of

an arbitral award with respect of the same subject matter, if the arbitral proceedings were invoked without the Court's leave?

- Whether such arbitral award is enforceable?

The Supreme Court observed, *inter alia*, the following:

Since the Suit was pending at the time of the reference, only Chapter IV and Section 21 of the Act could apply. No application was ever made to the Trial Court; no order of reference was passed. Therefore, the arbitral proceedings were conducted without mandatory compliance with Section 21 of the Act and is legally ineffective as a bar to the Suit.

The proviso to Section 47 of the Act provides the only saving route for an award obtained outside the framework of the Act. It allows such an award to be treated as a compromise or adjustment of the pending suit, but only if all parties consent to this after the award is made. Two conditions must be met:

- Award must be "otherwise obtained" (i.e., outside the Act's requirements).
- All parties must give post-award consent to arbitrate is not enough; there must be a fresh consent to the award itself.

Accordingly, the Supreme Court held that an arbitral award cannot be enforced under the Act if invoked without the leave of the Court where a Suit is pending with respect to the same subject matter.

VA View:

The judgement settles that when a civil suit is pending between parties, any reference to arbitration in respect of the same subject matter must go through Section 21 of the Act, which requires a joint application by all parties to the court where the suit is pending for a formal order of reference. The Supreme Court clarified the position of law that such provisions are not merely procedural. An award made without following the Section 21 route of the Act is unenforceable against the parties to the suit. Further, the Supreme Court also recognized that the only saving grace in case Section 21 of the Act is not

followed is the proviso to Section 47, which allows such an award to be treated as a compromise, but only with the post-award consent of all parties. In the absence of such consent, the award cannot be used to non-suit the plaintiff, and the court must decide the suit on its merits. This clarification comes as a caution to the parties that the requirement under Section 21 of the Act is not a mere technicality and non-observance of the same can even lead to the frustration of the arbitral award rendered under any arbitral proceedings invoked under the Act.

DISCLAIMER: The material contained in this publication is solely for information and general guidance and not for advertising or soliciting. The information provided does not constitute professional advice that may be required before acting on any matter. While every care has been taken in the preparation of this publication to ensure its accuracy, Vaish Associates Advocates neither assumes responsibility for any errors, which despite all precautions, may be found herein nor accepts any liability, and disclaims all responsibility, for any kind of loss or damage arising on account of anyone acting/ refraining to act by placing reliance upon the information contained in this publication.

©2026, India. All Rights reserved with Vaish Associates Advocates

OUR OFFICES

DELHI

1st, 9th & 11th Floor,
Mohan Dev Building,
13, Tolstoy Marg,
New Delhi - 110001, India,

TEL: +91 11 42492525,
delhi@vaishlaw.com

MUMBAI

106, Peninsula Centre,
Dr. S. S. Rao Road, Parel,
Mumbai - 400012, India,

TEL: +91 22 42134101,
mumbai@vaishlaw.com

BENGALURU

Bhive Premium
Ramanashree (MG Road) No. 2/1,
Brunton Road, Off MG Road
Opposite Old Passport Office
Bengaluru - 560001, India

TEL: +91 80409 03588/ 89
bangalore@vaishlaw.com



CORPORATE, TAX AND BUSINESS ADVISORY LAW FIRM