



*Saraswati Poddar*  
*Senior Associate*

## **RE-LITIGATION OF ISSUES IMPERMISSIBLE UNDER ARBITRATION ACT**

The Delhi High Court (“**HC**”), in *Krishan Kumar and Another* case,<sup>1</sup> on July 25, 2024, held that Section 34 of Arbitration and Conciliation Act, 1996 (“**Act**”) is not meant for litigants to avoid participating in arbitration knowingly and then attempt to seek a “*second bite at the arbitral cherry*.”

### **Brief Facts.**

Shakuntla Agency Private Limited (“**SAPL**”) initiated arbitration proceedings against Krishan Kumar (“**Kumar**”) seeking specific performance of the Agreement to Sell (“**ATS**”) dated in 2005 pertaining to the plot in Delhi.

Arbitrator awarded allowing SAPL’s claim and directing Kumar to execute sale of property in favour of SAPL.

Aggrieved by award, Kumar filed petition under Section 34<sup>2</sup> of the Act before the HC.

### **Parties’ Contentions before HC.**

#### Kumar’s Contentions

- He was placed *ex parte*, as he was not informed about the arbitration proceedings.
- He became aware of the award only after filing of Execution Petition by SAPL.
- ATS was invalid due to a clause in the allotment letter preventing Zile Singh, the original allottee, from transferring property.

#### SAPL’s Contentions

- Cheques and receipts acknowledging payments to Kumar under the ATS were shown to the Arbitrator.
- Arbitrator noted that Kumar admitted to receiving payments for the disputed property, thus barring him from challenging ATS’s validity or SAPL’s right to specific performance.

### **HC’s Judgment and Reasoning.**

The HC:

- Highlighted Kumar’s uncontested signature on the order sheet indicated his awareness and deliberate choice not to file defence in the arbitration proceedings.
- Ruled that Kumar could not raise the allotment letter argument in Section 34 of A&C Act, as it was not presented at arbitral proceeding.

---

<sup>1</sup>*Krishna Kumar vs Shakuntla Agency Private Limited*, (2024) SCC OnLine Del 5801.

<sup>2</sup> Section 34: Application for setting aside arbitral award.

- Observed that Kumar admitted to receiving ATS payments, ruling that Krishan Kumar could not challenge the ATS's validity or specific performance.
- Observed that Kumar's arguments primarily aimed to reassess facts, which falls outside the purview of Section 34 of the Act.
- Held that Section 34 petition is not meant for litigants to avoid participating in arbitration knowingly and then attempt to "*seek a second bite at the arbitral cherry.*"
- Dismissed the petition under Section 34 of the Act holding that petition is completely devoid of merits.

\*\*\*\*

This *Counselence Connect* contains information in a nutshell on a recent change in law. This is not legal advice and must not be treated so. For legal advice, please contact us at: [info@counselence.com](mailto:info@counselence.com). Past issues of *Counselence Connect* are available on the 'Newsletters' page of our website ([www.counselence.com](http://www.counselence.com))