

Arbitration Act, 1940 [Repealed]

Chapter V - General

Save as otherwise provided in this Act the provisions of this Chapter shall apply to all arbitrations.

Section 27 - Power of arbitrators to make an interim award

- (1) Unless a different intention, appears in the arbitration agreement, the arbitrators or umpire may, if they think fit, make an interim award.
 - (2) All references in this Act to an award shall include references to an interim award made under sub-section (1).
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Section 28 - Power to court only to enlarge time for making award

- (1) The Court may, if it thinks fit, whether the time for making the award has expired or not and whether the award has been made or not, enlarge from time to time the time for making the award.
 - (2) Any provision in an arbitration agreement whereby the arbitrators or umpire may, except with the consent of all the parties to the agreement, enlarge the time for making the award, shall be void and of no effect.
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Section 29 - Interest on awards

Where and in so far as an award is for the payment of money the Court may in the decree order interest, from the date of the decree at such rate as the Court deems reasonable, to be paid on the principal sum as adjudged by the award and confirmed by the decree.

Section 30 - Grounds for setting aside award

An award shall not be set aside except on one or more of the following grounds, namely:

- (a) that an arbitrator or umpire has misconducted himself or the proceedings;
 - (b) that an award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid under Sec. 35;
 - (c) that an award has been improperly procured or is otherwise invalid.
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Section 31 - Jurisdiction

- (1) Subject to the provisions of this Act, an award may be filed in any Court having jurisdiction in the matter to which the reference relates.
- (2) Notwithstanding anything contained in any other law for the time being in force and save as otherwise provided in this Act, all questions regarding the validity, effect or existence of an award of an arbitration agreement between the parties to the agreement or persons claiming under them shall be decided by the Court in which the awarded under the agreement has been, or may be, filed, and by no

other Court.

(3) All applications regarding the conduct of arbitration proceedings or otherwise arising out of such proceedings shall be made to the Court where the award has been, or may be, filed, and to no other Court.

(4) Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, where in any reference any application under this Act has been made in a Court competent to entertain it, that Court alone shall have jurisdiction over the arbitration proceedings and all subsequent applications arising out of that reference, and the arbitration proceedings shall be made in that Court and in no other Court.

Section 32 - Bar to suits contesting arbitration agreement or award

Notwithstanding any law for the time being in force, no suit shall lie on any ground whatsoever for a decision upon the existence, effect or validity of an arbitration agreement or award, nor shall any arbitration agreement or award be ¹[enforced] set aside, amended, modified or in any way affected otherwise than as provided in this Act.

1. Inserted By Act 47 of 1963, Section 43 w.e.f. 1st March, 1964.

Section 33 - Arbitration agreement or award to be contested by application

Any party to an arbitration agreement or any person claiming under him desiring to challenge the existence or validity of an arbitration agreement or an award or to have the effect of either determined shall apply to the Court and the Court shall decide that question on affidavits:

Provided that where the Court deems it just and expedient, it may set down the application for hearing on other evidence also, and it may pass such orders for discovery and particulars as it may do in a suit.

Section 34 - Power to stay legal proceeding where there is an arbitration agreement

Where any party to an arbitration agreement or any person claiming under him commences any legal proceedings against any other party to the agreement or any person claiming under him in respect of any matter agreed to be referred, any party to such legal proceedings may, at any time before filing a written statement or taking any other steps in the proceedings, apply to the judicial authority before which the proceedings are pending to stay the proceedings ; and if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the arbitration agreement and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, such authority may make an order staying the proceedings.

Section 35 - Effect of legal proceedings on arbitration

(1) No reference nor award shall be rendered invalid by reason only of the commencement of legal proceedings upon the subject-matter of the reference, but when legal proceedings upon the whole of the subject-matter of the reference have been commenced between all the parties to the reference and notice thereof has been given to the arbitrators or umpire, all further proceedings in a pending reference shall, unless a stay of proceedings is granted under Sec. 34, be invalid.

(2) In this section the expression "parties to the reference" includes any persons claiming under any of the parties and litigating under the same title.

Section 36 - Power of court, where arbitration agreement is ordered not to apply to a particular difference, to order that a provision making an award a condition precedent to an action shall not shall

not apply to such difference

Where it is provided (whether in the arbitration agreement or otherwise) that an award under an arbitration agreement shall be a condition precedent to the bringing of an action with respect to any matter to which the agreement applies, the Court, if it orders (whether under this Act or any other law) that the agreement shall cease to have effect as regards any particular difference, may further order that the said provision shall also cease to have effect as regards that difference.

Section 37 - Limitations

(1) All the provisions of the Indian Limitation Act, 1908 (9 of 1908),¹ shall apply to arbitrations as they apply to proceedings in Court.

(2) Notwithstanding any term in an arbitration agreement to the effect that no cause of action accrue in respect of any matter required by the agreement to be referred until an award is made under the agreement, a cause of action shall, for the purpose of limitation, be deemed to have accrued in respect of any such matter at the time when it would have accrued but for that term in the agreement.

(3) For the purpose of this section and of the Indian Limitation Act, 1908 (9 of 1908),¹ an arbitration shall be deemed to be commenced when one party to the arbitration agreement serves on the other parties thereto a notice requiring the appointment of an arbitrator, or where the arbitration agreement provides that the reference shall be to a person named or designated in the agreement, requiring that the difference be submitted to the person so named or designated.

(4) Where the terms of an agreement to refer future differences to arbitration provide that any claims to which the agreement applies shall be barred unless notice to appoint an arbitrator is given or an arbitrator is appointed or some other step to commence arbitration proceedings is taken within a time fixed by the agreement, and a difference arises to which the agreement applies, the Court if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may on such terms, if any, as the justice of the case may require, extend the time for such period as it thinks proper.

(5) Where the Court orders that an award be set aside or orders, after the commencement of an arbitration, that the arbitration agreement shall cease to have effect with respect to the difference referred, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Indian Limitation Act, 1908 (9 of 1908)¹ for the commencement of the proceedings (including arbitration) with respect to the difference referred.

1. Now the Limitation Act, 1963 36 of 1963.

Section 38 - Disputes as to arbitrators remuneration or costs

(1) If in any case an arbitrator or umpire refuses to deliver his award except on payment of the fees demanded by him, the Court may, on an application in this behalf, order that the arbitrator or umpire shall deliver that award to the applicant on payment into Court by the applicant of the fees demanded, and shall, after such inquiry, if any, as it thinks fit, further order that out of the money so paid into Court there shall be paid to the arbitrator or umpire by way of fees such sum as the Court may consider reasonable and that the balance of the money, if any, shall be refunded to the applicant.

(2) An application under sub-section (1) may be made by any party to the reference unless the fees demanded have been fixed by written agreement between him and the arbitrator or umpire, and the arbitrator or umpire shall be entitled to appear and be heard on any such application.

(3) The Court may make such orders as it thinks fit respecting the costs of an arbitration where any question arises respecting such costs and the award contains no sufficient provision concerning them.
