

## **An arbitrator can close the right of the claimant to file the claim**

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An Arbitration proceeding starts from the filing of a claim by a claimant before an arbitral institution or before an Arbitrator. The right to file a claim by the claimant is not an absolute right and that right also can be closed by an Arbitrator and proceed to grant time for the respondent to file its counter claim. In case such a situation arises to a claimant, what is the remedy available to the claimant in India under Arbitration and Conciliation Act, 1996, is the question dealt with in this Article.

An arbitration award passed by an arbitrator in an arbitration proceedings can be challenged in a court under S.34 of the Arbitration and Conciliation Act, 1996. But there can be certain circumstances in which arbitrator may close an arbitration without passing an award and whether there is a remedy available to the claimant to challenge that order of the arbitrator, in a court of law, without waiting for the final award. For example, closing the right of the claimant to file a claim or closing the right of the respondent to file a counter claim is a final order relating to that claim, but has not resulted in an arbitration award. In the above said cases there is no final award and the arbitration proceedings may continue after that order.

The right to file a claim by a claimant or a right to file a counter claim by the respondent in an arbitration proceedings is not an absolute right. In case either the claimant or respondent are unduly delaying the proceedings, the arbitrator has the powers under S.23&25 of the said Act, to close the right and proceed further with the arbitration proceedings. That means, if the claimant after taking many adjournments, it is not filing the claim, the arbitrator may close the right of the claimant to file his claim and allow the respondent to file the counter claim. He can also finally pass an award only on the counter claim. More over on the date on which arbitrator closed the right of the claimant to file the claim, the arbitrator would pass only a final order relating to the claims of the claimant. Such a final order passed by an arbitrator is not an award and hence the said

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order cannot be challenged by a proceeding in a court of law, filed under Section 34 of the act.

One similar case **Gangotri Enterprises Limited Vs NTPC Tamilnadu Energy Company Limited 2017 SCC Online 6560**, came up before Delhi High Court under S.14(2) of the Act, challenging an order passed by an arbitrator. In that case the claimant sought for a disclosure and the arbitrator provided all the details. After that took several adjournments on the ground of filing the claim petition and finally Arbitrator closed the right of the claimant to file the claim petition under S.23 & 25 of the Act and proceeded with the counter claim. The Court confirmed the powers of the Arbitrator to close the rights of the claimant and said that parties aggrieved by such orders can file an appeal under S.14 of the Act.