

## Understanding Section 9(2) Timeline Violations in Arbitration

### Introduction

Arbitration was introduced as an efficient and practical alternative to court procedures and litigation. To support the same, certain power was given to the courts to grant certain interim protection to the parties under **Section 9 of the Arbitration and Conciliation Act, 1996** (herein referred to as the Act). This power

enables the court to provide protection of the subject matter of the dispute and give the parties an immediate remedy before the arbitral tribunal decides the matter.

Before the amendment of 2015, parties used to misuse this provision a lot. After getting interim protection from the court, they often used to delay **arbitration** for months or even years. Parties enjoyed this protection without taking any real steps towards resolving the dispute. This eventually created delay and defeated the purpose of speedy resolution.

To prevent the same, Section 9(2) was introduced through the amendment of 2015. This was to ensure that parties seeking urgent relief were genuinely open to proceed with the arbitration and not merely use this protection for their personal gain.

### The 90-Days Rule

Section 9(2) of the Act states that in cases where a court grant interim relief before the commencement of arbitration, the proceedings as to arbitration must begin within 90 days from the date the order has been passed, unless the court grants further time. The purpose is simple; to fulfil the purpose of arbitration. It is, however, only a temporary measure and only meant to support the process, not replace it. The law therefore expects the party which obtains protection from the court, to initiate arbitration within a reasonable period of time.

The term “shall” in the provision indicates that the legislature expects the parties to treat this provision with seriousness. It has been repeatedly observed by the courts that a person approaching it under Section 9 must show a genuine intent to arbitrate the dispute. Seeking

interim protection under this Act carries with it responsibility of taking the matter towards the final resolution through arbitration. Speaking practically, once the court grants protection, the party cannot remain inactive or postpone the process of arbitration.

## Different Approaches Taken by the Courts

Indian courts have not usually followed a uniform approach when it comes to violations under Section 9(2) of the Act. Some courts have interpreted this provision in a strict manner.

In *M/s Paton Construction Pvt. Ltd. Vs. M/s Lorven Projects Ltd.*, the Karnataka High Court held that allowing the interim relief to continue without any bar would defeat the purpose behind the 2015 amendment. Similarly, the Hyderabad High Court highlighted the fact that temporary protections continue forever when no arbitration proceedings are initiated in the first place.

At the same time, some courts adopted a flexible approach too. The Bombay High Court and the Calcutta High Court in certain cases allowed the extension beyond the 90-days limit where the reason behind such extensions seemed genuine and satisfactory. Here, the courts relied on the latter part of Section 9(2) which allows the courts to extend the time if circumstances require it.

## Supreme Court on Commencement of the Arbitration

Another important issue concerning Section 9(2) of the Act concerned with the meaning of “commencement” of arbitration proceedings. The question became important in situations where parties issued notices invoking arbitration, but the tribunal had not been constituted officially.

The **Supreme Court of India** clarified the same in the case of *Rengeta Hotels Pvt. Ltd. Vs. Hotel Grant Centre Point and Others*. It held that the arbitral proceedings commence when the respondent receives notice invoking arbitration under Section 21 of the Act.

The argument that arbitration should be treated as commenced only after filing a Section 11 petition for **appointment of an arbitrator** was rejected. The Court observed that such an interpretation would unnecessarily tie arbitration to judicial procedures weakening the independent nature of arbitration.

Therefore, if a Section 21 notice is received by the respondent within 90 days of the interim order, the requirement under Section 9(2) would still stand satisfied even if the tribunal is formed later.

## Conclusion

Section 9(2) of the Act plays an important role in maintaining fairness within the Indian arbitration. It ensures that interim protections given by the courts must stay only a temporary measure and stay connected to genuine resolution of arbitration proceedings.

Although courts still hold different opinions as to mandating the 90-day timeline in every case, the broader approach still holds on to timely commencement of the process.

Ultimately, parties seeking interim relief under Section 9 must remember that such a relief comes with inherent responsibility to not use it as a tool for personal gain which eventually results in causing delay to the entire process.

Once the relief is granted, the courts expect the parties to actively pursue arbitration instead of allowing the disputes to remain unresolved for a really long period of time.